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December 27, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP2005-CR State v. Earl Jones, Jr. (L. C. No. 1997CF973526)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Earl Jones, Jr., pro se, appeals an order denying a motion for postconviction relief. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2015-16).[1]

[1] References to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In 1997, Jones was found guilty by a jury of felony murder and armed robbery. His appellate counsel filed a no-merit report, and Jones did not respond. Upon our independent review of the record, we affirmed his conviction on direct appeal by summary order. Since then, Jones has filed seven unsuccessful collateral challenges to his conviction. This is his eighth collateral challenge and appeal.

Jones filed various postconviction motions in early 2004, in the form of letters to the circuit court. Jones requested DNA testing at state expense of the bat handle used to strike the murder victim, and of wood fragments found in the victims head. The circuit court denied the motions, holding that Jones's allegations were conclusory, and that the motions were procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The court specifically found there was no reason the issue raised could not have been raised in response to the no-merit report. The court also found, "His request for DNA testing does not pass muster under WIS. STAT. § 974.07." We affirmed the court's order denying Jones's request for DNA testing, agreeing the claims were procedurally barred by ***Escalona-Naranjo***. We noted Jones was required to present all of the grounds for postconviction relief available to him in a postconviction motion or direct appeal. We concluded Jones "had the opportunity to respond to counsel's no-merit report, and to raise any issue he wanted the court to consider, and chose not to do so. He may not now relitigate those issues."

In 2016, Jones again moved for wood comparison testing. Jones requested the State incur the cost of the testing under WIS. STAT. § 974.07. In the alternative, Jones sought testing at his own expense. The circuit court summarily denied the motion. The court noted Jones had filed a motion for DNA testing in 2004. The court also stated that, in addition to the no-merit procedure that followed his conviction in 1996, Jones had filed numerous pro se motions for postconviction

relief, all of which have been denied on the grounds that his claims are procedurally barred. The court held Jones's 2016 request for DNA testing was merely a variation of the same claim he raised in 2004. The court subsequently denied a motion for reconsideration. The court also noted that further motions would result in the assessment of costs for filing frivolous motions. Jones now appeals.

A defendant is required to raise all grounds for relief in an initial postconviction motion, or on a direct appeal. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-86. Grounds once litigated may not be relitigated in subsequent motions. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Convicted defendants are not entitled to pursue an endless succession of postconviction remedies. ***Escalona-Naranjo***, 185 Wis. 2d at 184.

In 2016, Jones requested that the State Crime Laboratory conduct wood comparison testing of the baseball bat that was used to kill the victim with wood splinters recovered from the murder victim. Jones also requested in 2004 that the crime lab "perform a wood comparison between the wood splinters that were removed from [the victim's] right eye during autopsy to this piece of bat handle allegedly used" to kill the victim.

As we stated in our decision affirming the denial of his 2004 postconviction motion, the factual basis for Jones's claims could have and should have been known to Jones at the time of the no-merit report. Because Jones received a copy of the no-merit report, Jones himself had the opportunity to raise any issues not identified by counsel. Jones did not provide sufficient reasons why the issues he identified in 2004 could not have been raised when given an opportunity to respond to the no-merit report. He also fails to provide sufficient reasons why his current claims could not have been brought nearly twenty years ago. *See* ***id.*** at 181-86. Jones's current appeal

involves claims Jones could have but failed to raise on direct appeal. Our review of Jones's motions confirms that the circuit court correctly concluded that Jones merely seeks to repackage his claims. His current motion is a variation of the same claims he raised in 2004, no matter how Jones theoretically spins it. Jones insists that his motion is not barred because "none of those motions sought DNA testing at Jones's own expense." However, we reject bifurcated postconviction motions, and require that all claims be consolidated into one motion. *See* ***State v. Kletzien***, 2011 WI App 22, ¶¶12-15, 331 Wis. 2d 640, 794 N.W.2d 920. Jones argues without citation to legal authority that a defendant without financial means should first be able to seek testing at public expense, and if the defendant later comes into funds, he or she may file the same motion to obtain the testing at his or her own expense. Simply put, Jones's argument runs counter to the need for finality in our litigation. As mentioned previously, the purpose of ***Escalona-Naranjo*** is to require criminal defendants to consolidate all their postconviction claims into one motion or appeal. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185. Jones's claim is barred.

Even on the merits, Jones fails to analyze the requirements of WIS. STAT. § 974.07, or to develop an argument as to why his request to compare "the wood type of the baseball bat" with the type of wood "found within the wound area of [the victim's] head" would involve postconviction DNA testing. We shall therefore not further address the issue. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 93 (1988).

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals