



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 21, 2018

To:

Hon. T. C. Dee
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233-1425

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Warren D. Weinstein
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Andre N. Burkett
5122 N. 64th St.
Milwaukee, WI 53218-4004

Criminal Appeals Unit
Department of Justice
P.O. Box 7857
Madison, WI 53707-7857

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

2017AP260	State of Wisconsin v. Andre N. Burkett (L.C. # 1999CF1892)
2017AP261	State of Wisconsin v. Andre N. Burkett (L.C. # 1999CF2211)

Before Kessler, Brash and Dugan, 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).

Andre N. Burkett, *pro se*, appeals circuit court orders, entered on February 7, 2017, that denied a request for postconviction relief in these cases.¹ Upon our review of the briefs and

¹ The circuit court entered the same order in both cases underlying this appeal.

records, we conclude at conference that these matters are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).² We summarily affirm.

In 1999, the State charged Burkett with theft by written lease, theft by false representation, taking and driving a vehicle without owner's consent, and, because he committed the crimes while released on bond, three counts of felony bail jumping. In August 2000, a jury found Burkett guilty as charged. The circuit court imposed six indeterminate prison sentences, and the circuit court also imposed a variety of financial obligations. Burkett pursued a direct appeal, and his appellate counsel filed a no-merit report. *See* WIS. STAT. § 974.02; WIS. STAT. RULE 809.32. This court summarily affirmed the convictions. *See State v. Burkett (Burkett I)*, Nos. 2002AP1127-28-CRNM, unpublished op. and order (WI App Mar. 6, 2003).

A few months after resolution of the no-merit appeals, Burkett, proceeding *pro se*, moved for appointment of postconviction counsel. The circuit court denied the motion, and we affirmed. *See State v. Burkett (Burkett II)*, Nos. 2003AP1846-48, unpublished slip op. (WI App July 15, 2005).³ In 2008, Burkett filed a motion for postconviction relief raising various challenges and alleging his innocence. The circuit court denied relief. We affirmed. *See State v. Burkett (Burkett III)*, Nos. 2008AP663-65, unpublished slip op. (WI App Dec. 22, 2009).

² All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

³ Our March 6, 2003 opinion, like several others we reference, resolved not only appeals arising out of the two cases underlying the instant proceedings, but also an appeal arising out of a third criminal case involving Burkett.

In March 2014, the circuit court docketed a notice in case No. 1999CF1892 reflecting that the Department of Corrections anticipated discharging Burkett. On August 29, 2014, the circuit court entered a judgment in that case for the financial obligations Burkett had failed to satisfy.

On September 3, 2014, Burkett began peppering the circuit court with postconviction submissions, variously characterized as motions for postconviction relief, to “reopen” the cases, and to “review merit report.” The circuit court denied his claims, and Burkett filed notices of appeal, none of which led to relief from this court. *See, e.g. State v. Burkett (Burkett IV)*, Nos. 2015AP352-54, unpublished op. and order (WI App Mar. 26, 2015) (dismissing appeals); *State v. Burkett (Burkett V)*, Nos. 2016AP1125-26, unpublished op. and order (WI App Aug. 4, 2016) (dismissing appeals); *State v. Burkett (Burkett VI)*, No. 2017AP121-CR, unpublished op. and order (WI App Jan. 25, 2017) (dismissing appeal arising out of circuit court case No. 1999CF1892); *State v. Burkett (Burkett VII)*, No. 2017AP123-CR, unpublished op. and order (WI App Jan. 25, 2017) (dismissing appeal arising out of circuit court case No. 1999CF2211).

On January 27, 2017, Burkett filed a document he characterized as “a letter of motion.” In response, the circuit court entered orders denying any relief, explaining that Burkett had moved “to dismiss all false testimony” but “[t]he cases are over. [Burkett] has not set forth a cognizable claim and is not entitled to the relief he seeks.” Burkett appeals.

Although Burkett’s “letter of motion” did not identify the procedural basis for his litigation, WIS. STAT. § 974.06 is the avenue for convicted persons to seek postconviction relief after exhausting their direct appeal rights under WIS. STAT. § 974.02 and WIS. STAT. RULE

809.30 or WIS. STAT. RULE 809.32. See *State v. Henley*, 2010 WI 97, ¶¶47-50, 328 Wis. 2d 544, 787 N.W.2d 350. There are, however, limitations. First, a person cannot litigate claims under § 974.06 unless the person is “in custody under the sentence he desires to attack.” See *State v. Bell*, 122 Wis. 2d 427, 431, 362 N.W.2d 443 (Ct. App. 1984). Burkett had the obligation to demonstrate in his postconviction motion that he satisfied this precondition for litigation under § 974.06. See *State v. Allen*, 2004 WI 106, ¶¶9, 34, 274 Wis. 2d 568, 682 N.W.2d 433 (circuit court may deny postconviction relief without a hearing if the motion fails to allege facts sufficient to entitle the person to relief). Nothing in Burkett’s January 27, 2017 submission alleged or showed that he was currently serving any part of his sentence on either of these cases. Therefore, he failed to show that he could proceed under § 974.06.

Second, a person who has established standing to proceed under WIS. STAT. § 974.06, faces an additional hurdle if he or she has previously litigated a postconviction motion. Pursuant to § 974.06(4), a person who wishes to pursue a second or subsequent postconviction motion must demonstrate a sufficient reason for failing in the prior postconviction proceedings to raise or adequately address the issues. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 184-85, 517 N.W.2d 157 (1994). The rule furthers the goal of finality, which is “central to the fair and efficient administration of justice.” See *Henley*, 328 Wis. 2d 544, ¶53. On appeal, this court determines the sufficiency of a movant’s reason for serial litigation by examining the four corners of his or her postconviction motion. See *Allen*, 274 Wis. 2d 568, ¶27.

We have reviewed the January 27, 2017 motion that Burkett filed in these matters. It offers no reason, much less a sufficient reason, that he failed to raise or fully litigate all of his claims during his prior postconviction motions and appeals. Accordingly, his current claims are barred, and the circuit court properly denied them.

Moreover, we conclude that we must affirm the circuit court's orders denying relief for an additional reason unrelated to the limitations imposed by WIS. STAT. § 974.06: the brief that Burkett filed in this court fails to comply with the rules of appellate procedure. *See* WIS. STAT. RULE 809.19. The brief does not include the statement of issues required by RULE 809.19(1)(b), nor does the brief include “[a]n argument, arranged in the order of the statement of issues presented ... contain[ing] the contention of the appellant, the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on,” *see* RULE 809.19(1)(e). Burkett's citations to authority are largely inscrutable.⁴ His text is comprised of conclusory assertions submitted along with photocopied documents of uncertain origin containing handwritten annotations and superimposed text. We agree with the State that the brief lacks “any rational, relevant legal argument” and is merely “a collection of random statements or principles.”

“A party must do more than simply toss a bunch of concepts into the air with the hope that either the ... court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). Because neither the brief that Burkett filed in this court nor the underlying postconviction motion provide any legally cognizable basis for relief,

⁴ Burkett claims to rely on numerous statutes, several of which he describes as “Wis. Stat. § No Suspect” (ellipses omitted). Others he describes more expansively, but no more clearly, as, *e.g.*, “WIS. STAT. § No Suspect #10 Chart,” and “WIS. STAT. § #5 Chart – False evidence” (ellipses omitted).

IT IS ORDERED that the orders are summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals