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DISTRICT I

February 26, 2018

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

2016AP2231

State of Wisconsin v. Laponzo Monroe Dallas
(L.C. #1995CF952617)

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).

Laponzo Monroe Dallas, *pro se*, appeals from an order denying his postconviction motion to vacate his judgment of conviction. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Background

In 1996, a jury found Dallas guilty of second-degree sexual assault. The circuit court imposed a ten-year sentence.²

Dallas's appointed appellate counsel filed a no-merit report on Dallas's behalf. In a decision dated February 1, 1999, this court rejected the no-merit report following the State's belated discovery of crime laboratory test results. In accordance with our no-merit procedure, we dismissed the appeal and reinstated Dallas's deadline for filing a postconviction motion or notice of appeal under WIS. STAT. RULE 809.30(2)(h). We also relieved counsel from further representation and directed the State Public Defender to appoint successor postconviction counsel for Dallas.

Successor counsel then filed a postconviction motion raising several claims related to the State's discovery of the laboratory test results. The postconviction court denied the motion, and Dallas appealed.³ We subsequently dismissed Dallas's appeal because he failed to timely file his brief after receiving two deadline extensions.

In the postconviction motion that underlies this appeal, Dallas sought to vacate his judgment of conviction due to "fraud" in the appellate procedure. He argued that this court failed to affirm his judgment of conviction in our decision rejecting his appellate counsel's no-merit report. Dallas sought relief under WIS. STAT. § 806.07(1)(a).⁴

² The Honorable Patricia D. McMahon presided over Dallas's trial and sentenced him.

³ The Honorable Elsa C. Lamelas issued the order denying this motion.

⁴ As relevant here, WIS. STAT. § 806.07(1) provides:

On motion and upon such terms as are just, the court ... may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:

(a) Mistake, inadvertence, surprise, or excusable neglect[.]

The postconviction court denied the motion, concluding that Dallas’s “assertion of fraud is patently absurd, because the appellate court only would have affirmed the judgment of conviction if it had determined that further appellate proceedings would be frivolous and without arguable merit. That is clearly not the determination the appellate court reached in its prior decision.”

Dallas appeals.

Discussion

We begin by addressing Dallas’s efforts to secure postconviction relief by filing a motion under WIS. STAT. § 806.07. Application of a statute to a set of facts presents a question of law that we review *de novo*. See *State v. Bodoh*, 226 Wis. 2d 718, 724, 595 N.W.2d 330 (1999).

WISCONSIN STAT. § 806.07 permits a court to relieve a party from a judgment, order, or stipulation for enumerated reasons. This statute applies in civil actions. See *State ex rel. Lewandowski v. Callaway*, 118 Wis. 2d 165, 172, 346 N.W.2d 457 (1984). Dallas cannot use § 806.07 to secure relief in this criminal action.

Instead, WIS. STAT. §§ 974.02 and 974.06 provide the primary statutory means for criminal defendants to seek postconviction relief. See *State v. Henley*, 2010 WI 97, ¶¶39, 44, 328 Wis. 2d 544, 787 N.W.2d 350. In this case, however, §§ 974.02 and 974.06 are not available to Dallas.

First, he did not timely file a claim for relief under WIS. STAT. § 974.02. See *id.* (providing that postconviction relief and appeals by criminal defendants “shall be” governed by WIS. STAT. RULE 809.30, which sets forth the time limitations for pursuing postconviction relief). Dallas filed the underlying postconviction motion more than seventeen years after what he claims was “fraud” in our February 1, 1999 decision. Second, Dallas completed his sentence in this matter on September 25, 2008. WISCONSIN STAT. § 974.06(1) allows a defendant who believes his or her sentence is unlawful to seek relief after the time for appeal or postconviction relief under WIS. STAT. § 974.02 has expired. However, the motion must be brought by “a prisoner in custody under sentence of a court[.]” See § 974.06(1). A defendant who completes

the sentence he or she wishes to attack and is subsequently discharged from custody and supervision is not “in custody” for § 974.06 purposes. *State v. Theoharopoulos*, 72 Wis. 2d 327, 329, 240 N.W.2d 635 (1976).

Because Dallas does not have a legal avenue for pursuing his claim, we affirm the postconviction court’s order albeit on an alternative ground. *See State v. Earl*, 2009 WI App 99, ¶18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755 (we may affirm on different grounds than those relied on by the circuit court).

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals