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DISTRICT II

May 30, 2018

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

2017AP1506

State of Wisconsin v. Derwin Dewayne Jones (L.C. #1998CF1184)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Derwin Dewayne Jones appeals pro se from an order denying his motion for resentencing. Based upon 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 Because we decided this issue against Jones in a prior appeal, we affirm.

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

Jones was convicted after a jury trial of first-degree sexual assault and child enticement by use of a dangerous weapon. He received a twenty-year sentence on the child enticement charge, and a consecutive thirty-year sentence on the sexual assault. His convictions were affirmed by this court in *State v. Jones*, No. 2001AP348-CR, unpublished slip op. (WI App Jan. 9, 2002). Later in 2002, Jones moved for postconviction relief under WIS. STAT. § 974.06. Because the victim was not under sixteen years of age at the time of the offenses, the child enticement conviction was vacated. The judgment was amended to reflect that Jones was convicted only of first-degree sexual assault and that he received a total sentence of thirty years.

In 2009, Jones filed a motion for resentencing and a new trial. As relevant here, Jones argued that he was entitled to resentencing on his sexual assault conviction because the sentence was based on inaccurate information, namely, the subsequently-vacated child enticement conviction. The circuit court denied Jones' motion. We affirmed, rejecting Jones' resentencing claim on the merits:

As noted by the trial court in denying Jones' motions for postconviction relief, it imposed separate, consecutive sentences for the child enticement and sexual assault convictions in 2000, so vacating the child enticement conviction did not compel resentencing on the sexual assault charge. Moreover, regardless of whether Jones was properly convicted of child enticement ..., when sentencing Jones for the sexual assault conviction, the trial court was entitled to consider how Jones got the victim into the secluded hospital restroom where he sexually assaulted her. His conduct comprised a portion of the facts surrounding the sexual assault and was relevant in assessing the gravity of the sexual assault, Jones' character, and the public's need for protection from him. It was information that was properly considered by the trial court when sentencing him for the sexual assault.

State v. Jones, No. 2009AP1491-CR, unpublished op. and order at 3-4 (WI App Jan. 6, 2010).

Jones continued to file motions in the circuit court alleging that the vacated child enticement charge entitled him to sentencing relief. The circuit court denied these claims in 2011 and in 2014, and Jones did not appeal.

Jones filed several postconviction motions in 2016. As relevant here, Jones repeated his previous argument that he was entitled to resentencing on his sexual assault conviction because the child enticement conviction was vacated. The circuit court denied Jones' motions in full. Jones appeals the order denying resentencing.

It is well established that “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). As the State points out, we previously addressed this resentencing claim in *Jones*, No. 2009AP1491-CR, at 2-4. Because we have already resolved this issue adversely to Jones, it may not be relitigated in the current proceeding. Further, in the intervening years leading to the instant appeal, Jones twice raised this claim in the circuit court. Jones cannot keep raising the same issue hoping for a different result. As such, the circuit court properly denied Jones' latest motion for resentencing.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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