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**DISTRICT III**

June 5, 2018

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

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2017AP1055 State of Wisconsin v. Daniel L. Hanson (L. C. No. 2008CF165)

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).**

Daniel Hanson appeals an order denying his motion for postconviction relief from a criminal judgment of conviction entered in 2009. After reviewing the record, we have determined this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[1] Specifically, we conclude the claims Hanson raises in his current postconviction

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

motion are procedurally barred because Hanson failed to provide a sufficient reason why he did not raise them in his original postconviction motion or in his direct appeal, or in any of the other postconviction motions Hanson has subsequently filed in circuit court.

In 2009, a jury convicted Hanson of a 7th, 8th or 9th offense of operating a motor vehicle under the influence of an intoxicant (OWI), battery to an emergency rescue worker, and disorderly conduct.[2] Hanson filed a postconviction motion and direct appeal pursuant to WIS. STAT. RULE 809.30, raising several claims of ineffective assistance of counsel. This court affirmed Hanson's convictions on appeal. Over the following years, Hanson filed a series of additional motions in the circuit court seeking positive sentence adjustment and additional sentence credit, all of which were also denied.

In 2017, Hanson filed the postconviction motion that is the subject of this appeal, seeking relief from his OWI conviction pursuant to WIS. STAT. § 974.06. In this motion, Hanson, for the first time, alleged that the State had violated his due process rights by failing to disclose exculpatory evidence and that the police had violated his Fourth Amendment rights by drawing his blood without a warrant. The circuit court denied the motion and Hanson appeals.

No claim that could have been raised in a previously filed postconviction motion or direct appeal can be the basis for a subsequent WIS. STAT. § 974.06 motion unless the court finds the defendant had a sufficient reason for failing to raise the claim in the earlier proceeding. Sec. 974.06(4); ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

[2] Upon the State's motion, the circuit court dismissed an additional conviction for operating a motor vehicle with a prohibited alcohol level.

Hanson asserts two reasons for his failure to raise his current claims in prior proceedings. Neither is persuasive.

First, Hanson asserts that he was "in federal court doing Discovery and Disclosure in the U.S.D.C. for the unconstitutional search and search and seizure, blood testing." We construe this assertion as a claim that Hanson discovered evidentiary facts during his federal lawsuit that he did not previously possess. However, Hanson has not clearly identified what those facts are or exactly when he learned of them, much less explained how such newly discovered facts would support his current claims, or why his current claims could not have been brought without those facts. To the extent that Hanson may be referring to his learning that the police officer who took him for a blood draw did not fill out a certain form that Hanson believes should have been turned over to him in discovery, that fact actually undermines rather than supports Hanson's current claim that the State failed to disclose exculpatory evidence to him. As the circuit court observed, "[i]f the form had never been used or filled out, obviously it would not have been disclosed by the State."

Second, Hanson asserts that he "learned of: Gerald P. Mitchell's issues @ Wis. Ct. App. No: 2015AP304-CR …." (Punctuation omitted.) We construe this assertion as a claim that there have been developments in the case law related to warrantless blood draws since the time of Hanson's conviction. In particular, the United States Supreme Court has recently held that the potential dissipation of alcohol levels in a suspected drunk driver's blood does not constitute a per se exigent circumstance sufficient to provide an exemption from the warrant requirement. ***Missouri v. McNeely***, 569 U.S. 141, 156 (2013). However, in ***State v. Reese***, 2014 WI App 27, 353 Wis. 2d 266, 844 N.W.2d 396, this court determined that suppression of warrantless blood draws executed in this state prior to ***McNeely*** is not required because officers could rely in good

faith on the prior bright line rule in Wisconsin that the dissipation of alcohol from a person's blood stream constituted a sufficient exigency to justify a warrantless blood draw. ***Reese***, 353 Wis. 2d 266, ¶¶17, 22. Hanson's blood was drawn prior to ***McNeely***. Because the developments in case law to which Hanson refers would not afford him grounds for relief from his conviction, we conclude those developments do not provide a sufficient reason for Hanson to now raise a Fourth Amendment claim for the first time.

Therefore,

IT IS ORDERED that the postconviction order is summarily affirmed under WIS. STAT. RULE 809.21(1).

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

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*Sheila T. Reiff*
*Clerk of Court of Appeals*