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DISTRICT I

May 31, 2018

To:

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

2017AP79

State of Wisconsin v. Shomas T. Winston (L.C. # 2003CF6686)

Before Brennan, P.J., Kessler 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).

Shomas T. Winston, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2015-16).¹ Winston was convicted of first-degree intentional homicide and armed robbery in 2004. Winston argues: (1) newly discovered evidence shows that a person nicknamed "Wallstreet" was the perpetrator; (2) he was prevented

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

from presenting a complete defense because Wallstreet's identity was not known at the time of trial; (3) a recently discovered police report from two years *prior* to these crimes shows that Wallstreet and his brother committed an armed robbery similar to this one; and (4) we should exercise our power of discretionary reversal under WIS. STAT. § 752.35. 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. We affirm.

Winston first argues that new evidence shows that a person nicknamed "Wallstreet" was the perpetrator, not Winston. Winston points to a statement by his co-defendant, James Green, that Wallstreet was responsible, and information from two people who were in jail with Green. Both said that Green told them Wallstreet committed the crimes.

This claim is procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Winston has already raised the argument that Wallstreet was the perpetrator multiple times, including at trial; in fact, Green was cross-examined about Wallstreet's involvement during the trial. "Successive, and often reformulated, claims clog the court system and waste judicial resources." *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). For the above reasons, this claim is procedurally barred.

Winston next argues that he was prevented from presenting a complete defense because Wallstreet's identity was not known at the time of trial. This claim, too, is procedurally barred under *Escalona-Naranjo*, 185 Wis. 2d at 185. Winston could have raised this claim in his prior postconviction motions and appeals, but he failed to do so. *Escalona-Naranjo* mandates that a prisoner "raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion" unless the prisoner provides a sufficient reason for failing to do so. *Id.*

Winston has not provided any reason, let alone a sufficient reason, for failing to previously raise this claim. Therefore, it is barred.

Winston next argues that he is entitled to a new trial based on a recently discovered police report from two years *prior* to these crimes. The police report shows that Damion Sanders, who is apparently nicknamed “Wallstreet,” and Sanders’ older brother committed a similar armed robbery. Assuming for the sake of argument that this police report recently came to Winston’s attention, the information does not provide grounds for a new trial. Multiple eyewitnesses testified that Winston committed this crime. The fact that a person named Wallstreet may have also committed an armed robbery outside a check-cashing store two years before Winston committed this crime has no bearing on Winston’s culpability here.

Finally, Winston asks us to exercise our discretionary authority under WIS. STAT. § 752.35 to order a new trial on the grounds that the real controversy was not fully tried and justice has miscarried. We see no reason to exercise our discretionary authority under WIS. STAT. § 752.35.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals