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DISTRICT II

(Amended as to pages 4 and 5 on November 16, 2018)

October 10, 2018

To:

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

2018AP51 State of Wisconsin ex rel. Larry George v. Randy Hepp (L.C. #2017CV990)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Larry George appeals pro se from an order denying his petition for a writ of habeas corpus. He argues that his detention in prison is unlawful because the Department of Corrections erroneously computed his sentence. 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] We affirm the order of the circuit court.[2]

In a 1986 Winnebago County case, George was convicted of second-degree sexual assault and sentenced to sixteen years in prison. He was paroled in 1995 and absconded shortly thereafter. While on the lam, he picked up new charges in Brown County. George was placed in custody and his parole was revoked in 1999. He was ordered to serve out the remainder of his sentence.[3] In August 2001, Brown County imposed a consecutive fifteen-year sentence in connection with Brown County case No. 1996CF163. It is undisputed that George discharged from his Winnebago County sentence and is presently serving his Brown County sentence.

Over the years, George has litigated a number of motions and petitions in an attempt to secure an earlier-than-scheduled release from prison. *See, e.g.*, ***State v. George***, No. 2016AP525-CRAC, unpublished slip op. (Jan. 24, 2017); ***State ex rel. George v. Smith***, No. 2015AP382, unpublished op. and order (WI App Dec. 2, 2015); ***State v. George***, No. 2014AP1723-CR, unpublished op. and order (WI App Sept. 2, 2015); ***State ex rel. George v. Schwarz***, Nos. 2012AP2320/2013AP969, unpublished slip op. (WI App Feb. 19, 2014). To this end, he has proposed several similar theories seeking to invalidate the "consecutive" nature of his Brown County sentence.

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

[2] After briefing was complete, George filed a motion seeking summary reversal or remand to the circuit court. That motion is denied.

[3] George successfully moved the circuit court to reduce his sentence length. However, by opinion released February 28, 2001, this court reversed and remanded the circuit court's order with directions to reinstate the full reconfinement time. ***George v. Schwarz***, 2001 WI App 72, ¶30, 242 Wis. 2d 450, 626 N.W.2d 57.

In 2017, George filed the petition for a writ of habeas corpus underlying this appeal. The circuit court concluded that habeas relief was not available to George because he had previously litigated this claim and because he had fully served the Winnebago County sentence over which the circuit court had jurisdiction. George appeals.

"Writ of habeas corpus is an equitable remedy that protects a person's right to personal liberty by freeing him or her from illegal confinement." ***State v. Pozo***, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12. A writ will not issue where "the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure." ***Id.***, ¶9. Whether a writ of habeas corpus is available to the party seeking relief is a question of law that this court reviews de novo. ***Id.***, ¶6.

We conclude that George is not entitled to a writ for at least three reasons. First, as he acknowledges, the sentence he challenges has discharged. *See* ***State ex rel. Fuentes v. Wisconsin Court of Appeals, Dist. IV***, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999) (a necessary element of a habeas claim is that the challenged action is restraining the petitioner's liberty). As stated in our prior opinions, the resolution of George's petition would have no effect on the sentence imposed in this case. *See, e.g.*, ***George***, No. 2014AP1723-CR at 2. Under these circumstances, we agree with the circuit court that the writ petition serves no purpose. *See* ***State v. Thomas***, 2000 WI App 162, ¶19, 238 Wis. 2d 216, 617 N.W.2d 230 (discharge date signals the end of a criminal sentence).

Second, as George's brief readily acknowledges, he has previously litigated the claim that his post-revocation reconfinement time began on October 22, 2001, and therefore, his Brown County sentence, which was imposed shortly before that date, could not legally run consecutive

to Winnebago's sentence. *See* WIS. STAT. § 973.15(2)(a) (authorizing the circuit court to impose a sentence "consecutive to any other sentence imposed at the same time or previously"). He cannot merely repackage the same claim, hoping for a different result. ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 152 (1991) (a party may not relitigate issues previously decided "no matter how artfully [he] may rephrase the issue"). George seems to argue that the nature of his claim is different this time around because it relies on a June 6, 2017 Winnebago County Circuit Court "order for judicial notice" providing that his parole "re-incarceration/re-confinement in 86 CF 175 was established to be October 22, 2001." We are not remotely persuaded. In his previous appeals, we assumed that George's Winnebago reconfinement time began on October 22, 2001, but nevertheless denied relief. *See, e.g.*, ***George***, Nos. 2012AP2320/ 2013AP969 at ¶24; ***George***, No. 2014AP1723-CR at 2; ***George***, No. 2016AP525-CRAC at ¶3.

Finally, we will attempt to explain one more time why, no matter how packaged, George's claim lacks merit. It is beyond dispute that his Winnebago sentence was imposed in 1986, well before his Brown County sentencing. At the time of his Brown County sentencing, his parole had been revoked and he was serving his Winnebago sentence. As we have stated in prior decisions, at the time of his Brown County sentencing, this court had already ordered the full reincarceration sentence reinstated in the Winnebago county case. ***George***, No. 2015AP382 at 2 n.3.[4]

[4] We have previously offered this fact in response to George's prior attempts to "capitalize on the confusion resulting from time gaps and overlaps" in his cases' procedural histories, including court-ordered changes to the length of his post-parole reconfinement time. *See* ***George***, Nos. 2012AP2320/ 2013AP969 at ¶24.

We now make clear that even if the Brown County sentencing occurred *before* George's parole revocation (which it did not), Brown County permissibly could have ordered its sentence to run consecutive to the Winnebago sentence. *See* ***State v. Cole***, 2000 WI App 52, ¶¶2, 8-10, 233 Wis. 2d 577, 608 N.W.2d 432 (the circuit court may lawfully impose a sentence to run consecutive to any previously-imposed sentence, even where the defendant's parole on the previously-imposed sentence has not yet been revoked). Once imposed, a sentence continues to run during parole until final discharge. ***Id***., ¶10. George's myriad efforts to have October 22, 2001, declared as the start date for his parole reconfinement are in vain. Any adjustment to that start date—whether through George's earlier sentence modification motions or his more recent claims invoking sentence computation, sentence credit and judicial notice—would not impact the lawful nature of Brown County's consecutive sentence.

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