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DISTRICT IV

November 28, 2018

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

2018AP630 State of Wisconsin ex rel. Michael A. Sveum v. Tim Haines (L.C. # 2017CV1309)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, 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).

Michael Sveum, pro se, appeals a circuit court order denying his petition for a writ of habeas corpus. Sveum's petition asked the circuit court to revisit a 2011 order denying Sveum's postconviction motion in which Sveum claimed that he was denied his right to appointed counsel for the direct appeal of his conviction for aggravated stalking. 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 reject Sveum's arguments and affirm.

In 2006, Sveum was convicted of aggravated stalking and sentenced to seven years and six months of initial confinement and five years of extended supervision. Sveum represented himself during his original postconviction proceedings, in which we affirmed his conviction. *See* ***State v. Sveum***, 2009 WI App 81, 319 Wis. 2d 498, 769 N.W.2d 53. Our supreme court granted Sveum's petition for review, and also affirmed Sveum's conviction. *See* ***State v. Sveum***, 2010 WI 92, 328 Wis. 2d 369, 787 N.W.2d 317.

Sveum subsequently filed two postconviction motions for relief under WIS. STAT. § 974.06 (hereinafter "the 2011 motions"). Among other things, Sveum argued that he was denied his constitutional right to appointed counsel for his direct appeal. The circuit court denied Sveum's 2011 motions, determining that these motions were procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994) (pursuant to § 974.06, a "defendant should raise the constitutional issues of which he or she is aware as part of the original postconviction proceedings").

Sveum appealed the denial of his 2011 motions, and we affirmed. ***State v. Sveum***, No. 2011AP1221, unpublished op. and order (WI App Apr. 26, 2012). Specifically, we concluded that Sveum failed to show that he had a sufficient reason for not arguing that he was denied appellate counsel as part of his original postconviction proceedings. *See* ***Sveum***, No. 2011AP1221, at 2-3; *see also* ***Escalona-Naranjo***, 185 Wis. 2d 185-86 (a defendant seeking

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

to use WIS. STAT. § 974.06 in order to raise new claims must show a sufficient reason why these claims were not presented in an earlier motion or on direct appeal). In his 2011 motions, Sveum argued that court-imposed restrictions on computer access deprived him of the ability to research his legal claims within the required time lines for his original postconviction proceedings. *See* ***Sveum***, No. 2011AP1221, at 2. We rejected this argument, explaining that Sveum never requested an extension of the filing deadline, despite our practice of liberally granting such extensions upon a showing of good cause. *See* ***id.*** We further noted that Sveum's argument rang hollow because Sveum had raised several legally complex claims in the original postconviction proceedings and was able to develop those claims sufficiently well to obtain supreme court review. *See* ***id.***, at 3. In contrast, the denial of appellate counsel was not a complicated issue requiring extensive computer research. *See* ***id.*** Sveum then filed a petition for review with our supreme court, which was denied.[2] *See* ***State v. Sveum***, 2012 WI 115, 344 Wis. 2d 304, 822 N.W.2d 882 (No. 2011AP1221).

After unsuccessfully seeking habeas corpus relief in federal district court, Sveum filed a petition for state habeas corpus relief in circuit court. In this petition, Sveum asked the circuit court to revisit its order denying his 2011 postconviction motions. The circuit court denied Sveum's petition after a hearing. Sveum appeals.

[2] Sveum suggests that the supreme court's denial of his petition for review is significant to his arguments. To the extent Sveum is arguing that his 2011 postconviction motions were not an adequate remedy because the supreme court denied review, Sveum is incorrect. Sveum's 2011 postconviction motions were reviewed by the circuit court and the court of appeals. In contrast, our supreme court's review "is a matter of judicial discretion, not of right, and will be granted only when special and important reasons are presented." *See* ***State v. Minued***, 141 Wis. 2d 325, 327, 415 N.W.2d 515 (1987).

"Because it is an extraordinary writ, *habeas corpus* relief is available only where the petitioner demonstrates: (1) restraint of his or her liberty, (2) which restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law." ***State v. Pozo***, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12. "Whether writ of *habeas corpus* is available to the party seeking relief is a question of the law that we review *de novo.*" ***Id.***, ¶6.

Here, the State argues that Sveum's direct appeal and postconviction motions are both adequate remedies at law. As our supreme court has explained: "[A] petition for writ of *habeas corpus* will not be granted where (1) 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, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict." ***Id.***, ¶9 (citations omitted).

Sveum argues that the fact that he did not have counsel for his original postconviction proceedings means that these proceedings were not an adequate remedy. Even if we were to accept this argument, Sveum also had an adequate remedy under WIS. STAT. § 974.06. Indeed, Sveum used this remedy in 2011 when he filed a postconviction motion arguing that he was denied his right to appointed counsel.

Sveum further argues that WIS. STAT. § 974.06 is not an adequate remedy because the procedural bar of ***Escalona-Naranjo*** was incorrectly applied to his 2011 motions. Specifically, Sveum argues that we were legally bound to excuse his failure to include the denial of appellate counsel as one of the claims during his original postconviction proceedings. *See* ***Betts v. Litscher***, 241 F.3d 594, 596 (7th Cir. 2001) ("The Constitution does not permit a state to ensnare

an unrepresented defendant in his own errors and thus foreclose access to counsel."). Sveum is essentially seeking to relitigate our prior determination that the claims in his 2011 motions were barred by ***Escalona-Naranjo***. This, too, is barred. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) ("A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.").

In sum, we conclude that Sveum had other adequate remedies at law for the claim he is asserting in his petition for a writ of habeas corpus. The fact that Sveum is dissatisfied with the outcome of these remedies does not mean that they were inadequate. The circuit court properly denied Sveum's petition for a writ of habeas corpus.

Upon the foregoing reasons,

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