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DISTRICT IV

May 10, 2019

To:

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

2018AP907

State of Wisconsin ex rel. Brian Maus v. Gary Boughton
(L.C. # 2018CV84)

Before Lundsten, P.J., Blanchard 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).

Brian Maus, pro se, appeals an order denying his petition for writ of habeas corpus. 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 (2017-18).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

In 2007, Maus was found guilty by a jury of two counts of attempted battery by a prisoner as a repeater. See *State v. Maus*, No. 2013AP1232, unpublished slip op. ¶2 (WI App May 13, 2014). This court affirmed in a no-merit appeal. *Id.* Maus then filed a petition for a writ of habeas corpus in this court, alleging ineffective assistance of no-merit counsel. *Id.*, ¶3. We summarily denied the petition because it asserted the same arguments we rejected in our no-merit decision. *Id.* Next, Maus filed a postconviction motion in the circuit court, raising the same issues and numerous new issues. *Id.*, ¶4. The circuit court denied the motion, and this court affirmed on appeal. *Id.*, ¶¶1, 4. Maus then filed the petition for writ of habeas corpus in this case. The circuit court denied the petition.

“[H]abeas 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. Habeas corpus relief is not appropriate if: “(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.”² *Id.*, ¶9 (citations omitted). The procedural bar applies following a no-merit appeal, provided the no-merit procedures were properly followed. *State v. Allen*, 2010 WI 89, ¶62, 328 Wis. 2d 1, 786 N.W.2d 124.

² “WISCONSIN STAT. § 974.06 was adopted to replace *habeas corpus* as the primary method by which a defendant could attack his or her conviction after the time for appeal had expired.” *State v. Pozo*, 2002 WI App 279, ¶9 n.5, 258 Wis. 2d 796, 654 N.W.2d 12.

Maus contends that: (1) the circuit court lost subject matter jurisdiction over Maus's criminal case because the preliminary hearing was untimely and the state failed to establish probable cause for bindover; (2) the circuit court failed to comply with the required procedure to ensure that Maus was competent to represent himself before allowing Maus to proceed pro se; (3) Maus was denied due process when the state failed to disclose evidence and quashed Maus's witness subpoenas; and (4) the evidence was insufficient to sustain the convictions. It appears, however, that all of these arguments were already litigated in prior proceedings.

During Maus's direct no-merit appeal, Maus filed a response to the no-merit report in which he argued that: (1) the circuit court lost subject matter jurisdiction due to defects in the preliminary hearing proceedings; (2) the court failed to follow mandatory procedures regarding both Maus's waiver of counsel and proceeding pro se; (3) the state failed to retain evidence and the court erroneously denied Maus's request to call witnesses; and (4) the state failed to present sufficient evidence to support the convictions. *See Maus*, No. 2013AP1232, ¶2. This court addressed and rejected those arguments. *Id.* Maus may not relitigate those arguments here. *See Pozo*, 258 Wis. 2d 796, ¶9.

Maus also argues that his no-merit counsel was ineffective and alleges misconduct by various state actors during trial and postconviction proceedings. In Maus's prior WIS. STAT. § 974.06 motion, in addition to reasserting the claims from his no-merit response, Maus raised new claims of ineffective assistance of no-merit counsel and wrongful conduct by various state actors. *See Maus*, No. 2013AP1232, ¶¶4, 8. We concluded that Maus offered no reason for failing to raise those new issues in his response to the no-merit report. *See id.*, ¶¶7-12. Similarly, Maus has not provided any reason for failing to previously raise any new arguments in

his current petition. Therefore, we conclude that a writ of habeas corpus is not available to Maus, and we affirm the circuit court's order denying his petition.

To the extent that Maus raises additional issues not addressed in this opinion, we deem those issues insufficiently undeveloped or outside the scope of this appeal, and we decline to address them. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to consider undeveloped legal arguments); *see also* WIS. STAT. RULE 809.10(4) (matters reviewable on appeal).

Finally, the respondent requests this court to advise Maus that further attacks on Maus's convictions may result in conditions restricting the circumstances under which he may pursue appeals and result in sanctions for violating those conditions. *See State v. Casteel*, 2001 WI App 188, ¶¶19-27, 247 Wis. 2d 451, 634 N.W.2d 338. While we decline at this point to issue a definite *Casteel* warning, we remind Maus that claims unsupported by a sufficient reason for not previously raising them, rephrasing of resolved issues, and conclusory assertions will not earn him postconviction relief.

Therefore,

IT IS ORDERED that the order 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