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DISTRICT II

September 18, 2019

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

2018AP879 State of Wisconsin v. Nathan N. Williams (L.C. #2010CF334)

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

Nathan N. Williams appeals from an order denying his joint motions for sentence modification and for WIS. STAT. § 974.06 (2017-18)[1] postconviction relief. 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.

Following a jury trial, Williams was convicted of first-degree reckless injury by use of a dangerous weapon, felon in possession of a firearm, and being a party to the crimes of possessing

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

marijuana with intent to deliver and armed robbery. Williams pursued a WIS. STAT. RULE 809.32 no-merit appeal. His appellate counsel filed a no-merit report, Williams filed a response, and counsel filed a supplemental no-merit report. Upon consideration of the submissions and an independent review of the record, we affirmed Williams's convictions and discharged appellate counsel, concluding there was no merit to any issue that could be raised on appeal. ***State v. Williams***, No. 2013AP633-CRNM, unpublished op. and order (WI App May 14, 2014).

Thereafter, Williams filed a petition for a writ of habeas corpus pursuant to ***State v. Knight***, 168 Wis. 2d 509, 484 N.W.2d 540 (1992), alleging that his former appellate counsel was ineffective because he filed a no-merit report in lieu of a postconviction motion challenging trial counsel's performance. We denied the petition, concluding that the no-merit procedures were properly followed and that "the bulk of [Williams's] claims were addressed during the course of his no-merit appeal." ***State ex rel. Williams v. Smith***, No. 2016AP2465-W, unpublished op. and order at 2-3 (WI App Sept. 27, 2017). Pursuant to ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), these claims could not be relitigated in the guise of a ***Knight*** petition. We acknowledged that Williams raised one new issue—that counsel was somehow ineffective because the time stamp on the home security video placing Williams near the crime scene "was off by 1 hour." ***Williams***, No. 2016AP2465-W, at 5-6. We concluded that Williams failed to set forth a sufficient reason for failing to raise this issue in his no-merit response, and therefore he was procedurally barred from litigating it in his subsequent ***Knight*** petition. *See* ***State v. Allen***, 2010 WI 89, ¶93, 328 Wis. 2d 1, 786 N.W.2d 124.

In 2018, Williams filed the joint motions underlying this appeal. Williams's motions realleged that his sentence was the result of an erroneous exercise of discretion and that his trial attorney provided ineffective assistance by failing to: (1) challenge bite mark DNA evidence;

(2) call a DNA expert at trial; (3) challenge the search warrant used to obtain his DNA; (4) obtain or consult with a DNA expert; (5) investigate DNA "mix-ups" at the crime lab; (6) challenge the chain of custody for DNA evidence; (7) challenge the victim's in-court identification of Williams; (8) object to the State's peremptory strike which excluded "the only Black Venire Person;" (9) play for the jury recorded jail calls of his codefendant, Corey Moore-Morrison; and (10) investigate the time stamp on the home security video. Williams also argued that some of his complaints about trial counsel's performance constituted new factors justifying the modification of his sentence. The circuit court denied Williams's motions without a hearing. Williams appeals.

Nearly all of the issues raised in Williams's most recent motions were addressed in prior proceedings and cannot be relitigated now. Other than the video time stamp claim and his asserted new sentencing factors, each issue Williams raises was addressed in his appeal.[2] Thereafter, we rejected the video time stamp claim in our order denying his ***Knight*** petition. ***Williams***, No. 2016AP2465-W, at 5-6.

Further, the circuit court properly denied Williams's sentence modification motion, which relied on Moore-Morrison's jail calls, the video time stamp, and the racial makeup of the jury. These circumstances existed at the time of Williams's sentencing and none is a "new" factor. *See* ***State v. Harbor***, 2011 WI 28, ¶36, 333 Wis. 2d 53, 797 N.W.2d 828 (whether a new factor exists is a question of law).

[2] Though Moore-Morrison's jail calls were not expressly discussed in our decision affirming the judgment on appeal, Williams raised this issue in his response to the no-merit report. In affirming his judgment, we implicitly rejected this issue. Further, we rejected the jail-call issue for additional reasons as set forth in our order denying Williams's ***Knight*** petition. ***State ex rel. Williams v. Smith***, No. 2016AP2465-W, unpublished op. and order at 4-5 (WI App Sept. 27, 2017).

Finally, Williams asks for a new trial based on his "innocence." We agree with the State that Williams appears to be requesting a new trial in the interest of justice. *See* WIS. STAT. § 752.35 (setting forth this court's discretionary reversal power). However, Williams's brief fails to develop coherent arguments that apply relevant legal authority to the facts of record and instead relies on conclusory allegations. We reject Williams's "innocence" claim as insufficiently developed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992).

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