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DISTRICT IV

February 25, 2020

To:

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

2018AP2169

State of Wisconsin v. Armin G. Wand, III (L.C. # 2012CF74)

Before Blanchard, Kloppenburg, and Graham, 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).

Armin Wand 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. We affirm.

We conclude that Wand's habeas petition is barred by WIS. STAT. § 974.06(8) (2017-18),¹ which provides that a habeas petition:

shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.

Wand filed an earlier postconviction motion under WIS. STAT. § 974.06. The circuit court denied that motion. The State argues that Wand's habeas petition is now properly denied because he was previously denied relief under § 974.06 and he is not arguing that the remedy by such a motion is inadequate or ineffective.

Wand did not address that point in his opening brief, and did not file a reply brief to dispute it. Therefore, we conclude that, to phrase it in the terms of the statute, Wand's habeas petition shall not be entertained because it appears that he applied for relief by motion under WIS. STAT. § 974.06, the court denied him relief, and it does not appear that the remedy by motion under § 974.06 is inadequate or ineffective.

Therefore,

IT IS ORDERED that the order appealed is summarily affirmed under 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IT IS FURTHER ORDERED that this summary disposition order will not be published.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

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