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May 6, 2020

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

2019AP589-CR

State of Wisconsin v. Anthony P. Demski (L.C. #2015CF113)

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).

Anthony P. Demski appeals from a judgment of conviction and an order denying his postconviction motion. He seeks to withdraw his no contest plea. 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 affirm.

Demski was charged with multiple sex-related offenses involving an eight-year-old girl. Pursuant to a plea agreement, he pled no contest to the charge of child enticement. In exchange, the State agreed to dismiss the remaining charges² and recommend fifteen years of probation with one year of conditional jail time “with credit.”

At sentencing, the State recommended “a withheld sentence and a 15 year probationary period with 12 months of jail as a condition of the probation.” The State later confirmed that Demski was entitled to 434 days of credit. Neither Demski nor his attorney objected to the State’s recommendation. Ultimately, the circuit court imposed a sentence of ten years of initial confinement and ten years of extended supervision.

Demski filed a postconviction motion seeking either plea withdrawal or resentencing. He alleged that the plea agreement was breached or there was never a meeting of the minds because he believed that the State would ask for time served. Following a hearing on the matter, the circuit court, with a different judge presiding,³ vacated Demski’s sentence and resentenced him

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

² Two counts of attempted first-degree sexual assault of a child were dismissed outright. One count of exposing a child to harmful material and one count of exposing genitals were dismissed and read-in.

³ The Honorable Thomas J. Gritton entered the original judgment of conviction. The Honorable John A. Jorgensen presided over postconviction proceedings and entered the new judgment of conviction and order denying Demski’s postconviction motion.

to ten years of initial confinement and ten years of extended supervision. Neither Demski nor his attorney objected to the resentencing.

Demski subsequently filed a second postconviction motion seeking plea withdrawal. Again, he alleged that the plea was defective or incomplete, as there was no agreement as to how sentence credit would impact the State's recommendation of conditional jail time. The circuit court denied the motion without a hearing, finding that Demski was trying to relitigate the same issue he had previously raised. This appeal follows.

“We need finality in our litigation.” *State v. Escalona–Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

A circuit court has discretion to deny a postconviction motion without a hearing if the defendant's claim is procedurally barred. See *State v. Romero-Georgana*, 2014 WI 83, ¶71, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a defendant's claim is procedurally barred presents a question of law that we review de novo. *State ex rel. Washington v. State*, 2012 WI App 74, ¶27, 343 Wis. 2d 434, 819 N.W.2d 305.

On appeal, Demski renews his request to withdraw his no contest plea due to a misunderstanding regarding the impact of sentence credit on his case. We conclude that his claim is procedurally barred. As noted by the State, Demski brought the same claim in his first postconviction motion, and the circuit court granted one of the remedies that he sought (i.e., resentencing). Demski did not object to it. Having already litigated the issue, Demski cannot

relitigate it again in the hope of obtaining an alternative remedy. *See Witkowski*, 163 Wis. 2d at 990. Accordingly, we are satisfied that the circuit court properly denied his motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are 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