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DISTRICT I

December 8, 2020

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

2020AP442

State of Wisconsin v. Alfredo Vega (L.C. # 1993CF934212)

Before Brash, P.J., Graham, and White, 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).

Alfredo Vega, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2017-18).¹ Vega argues: (1) that he was unlawfully arrested without a warrant or probable cause; (2) that he is entitled to a new trial in the interest of

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

justice; and (3) that he is entitled to relief based on newly discovered evidence. We conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Vega was convicted of first-degree intentional homicide and armed robbery after a bench trial in 1994. His convictions were affirmed on appeal. In 2016, Vega filed a *pro se* postconviction motion pursuant to WIS. STAT. § 974.06, raising several issues, including an argument that there was no probable cause to arrest him and no arrest warrant. The circuit court denied the motion as procedurally barred because Vega did not provide a sufficient reason for failing to raise the issue during his direct appeal. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994) (absent a sufficient reason, a defendant may not bring claims in a § 974.06 motion if the claims could have been raised in a prior motion or on direct appeal). We affirmed.

Vega titled his current motion as a motion to take judicial notice under WIS. STAT. § 902.01, but Vega's substantive argument is that he is entitled to relief from his conviction on the grounds that he was unlawfully arrested without a warrant or probable cause. Vega raised these issues in his 2016 postconviction motion without success. "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). Because Vega already raised this argument, we will not consider it again.

Vega next argues that he is entitled to a new trial in the interest of justice. *See* WIS. STAT. § 752.35 (this court may reverse a judgment or order appealed from if it appears that the real controversy was not fully tried). The real controversy was whether Vega robbed and killed

the victim and that controversy was fully tried to the bench in 1994. Accordingly, Vega is not entitled to relief in the interest of justice.

Finally, Vega argues that his purportedly unlawful arrest is newly discovered evidence. Vega argued that his arrest was invalid in 2016, so he knew that there was no warrant for his arrest when he raised that argument. The circumstances of his arrest are therefore not newly discovered, and so we reject this argument.

IT IS ORDERED that the order of the circuit court 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