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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

January 20, 2021

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233

Jacob J. Wittwer
Attorney Generals Office
Post Office Box 7857
Madison, WI 53707-7857

John Barrett
Clerk of Circuit Court
821 W. State Street, Rm. 114
Milwaukee, WI 53233

Rodney Washington
c.o Doris Bryant
1759 N. Lotus Ave.
Chicago, IL 60639

Elizabeth A. Longo
Assistant District Attorney
821 W. State St.
Milwaukee, WI 53233

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

2019AP1441

State of Wisconsin v. Rodney Washington (L.C. # 2000CF1310)

Before Brash, P.J., Dugan and Donald, 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).

Rodney Washington, *pro se*, appeals a judgment convicting him of two counts of first-degree sexual assault with a dangerous weapon, two counts of armed robbery with use of force, and one count of second-degree sexual assault with use of a dangerous weapon. He also appeals the circuit court's order denying his motion for postconviction relief. Washington argues that the State misled the circuit court about the contents of the John Doe complaint initially filed in this case in 2000 before the statute of limitations for the crimes ran. Based on the briefs and record,

we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).¹ Upon review, we affirm.²

This case has a lengthy procedural history, which is recounted in part in our prior appellate decision. *See State v. Washington*, No. 2012AP1015-CR, unpublished slip op. ¶¶2-12 (WI App Mar. 26, 2013). Washington was convicted of the crimes in 2008 after a jury trial. We affirmed. Washington filed a federal habeas petition. The Seventh Circuit Court of Appeals granted the petition, concluding that this court erred by denying Washington's argument that he should have been allowed to represent himself. *Washington v. Boughton*, 884 F.3d 692, 701 (7th Cir. 2018). The Seventh Circuit Court of Appeals also ruled that there was no merit to Washington's unpreserved claim that the John Doe complaint violated his due process rights. *Id.* at 700. The court ordered the State to retry or release Washington within ninety days. The State vacated the conviction and retried Washington. Washington proceeded *pro se* with stand by counsel assisting him. He was again convicted. This appeal follows.

As pertinent here, Washington argued in his previous direct appeal that his trial counsel was ineffective for failing to challenge the trial court's jurisdiction because the initial John Doe complaint did not identify him with reasonable certainty. *Washington*, No. 2012AP1015-CR, ¶14. We rejected that argument. *Id.*, ¶23. In this appeal, Washington argues that the State misled the circuit court about the John Doe complaint by falsely indicating that it contained his specific DNA profile.

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

² Washington passed away while this appeal was pending.

Washington’s argument reframes an issue he previously litigated—whether the complaint was sufficient. “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). Therefore, we will not address Washington’s challenge to the complaint.

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