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DISTRICT III

February 2, 2021

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

2019AP568 State of Wisconsin v. Miquel D. Brown (L. C. No. 2002CF59)

Before Hruz, Seidl and Brash, 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).

Miguel Brown, pro se, appeals an order denying his WIS. STAT. § 974.06 (2017-18)[1] motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

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

In 2005, we affirmed Brown's conviction, following a jury trial, for two counts of delivery of crack cocaine and one count of possessing more than fifteen grams of cocaine with intent to deliver. ***State v. Brown***, No. 2003AP3257-CR, unpublished slip op. ¶1 (WI App Feb. 8, 2005). Brown's petition for review was subsequently denied by our supreme court. ***State v. Brown***, 2005 WI 134, 282 Wis. 2d 720, 700 N.W.2d 272. Over the course of the next decade, Brown filed six postconviction motions arguing that he was prejudiced by the circuit court's decision to allow the State to amend the Information in order to add the possession charge. We most recently held that his claims were procedurally barred in ***State v. Brown***, No. 2013AP1106, unpublished op. and order (WI App Mar. 4, 2014). This is now Brown's seventh postconviction motion, once again asserting that the State should not have been allowed to amend the Information.

Grounds for relief that have been previously litigated may not be the basis for a WIS. STAT. § 974.06 motion, 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). Additionally, § 974.06 requires that all grounds for relief available to a person must be raised in the original, supplemental, or amended motion. Claims that could have been raised on direct appeal or in a previous § 974.06 postconviction motion are barred from being raised in a subsequent § 974.06 motion absent a showing of a sufficient reason for why the claims were not raised on direct appeal or in a previous § 974.06 motion. *See* § 974.06(4).

In his current postconviction motion, Brown asserted that the circuit court's decision to allow the State to amend the Information was a "clear and manifest misuse of discretion" because the amendment was based on information obtained after the preliminary hearing. He also alleged ineffective assistance by both his trial counsel and appellate counsel. Brown

claimed his trial counsel was deficient for failing to move to dismiss the amended Information, and his postconviction counsel was deficient for failing to preserve this error on direct appeal. Even if we could somehow assume that any of Brown's claims were not previously litigated, however, he does not allege a sufficient reason for failing to raise these issues in any of his previous appeals. Brown's claims are thus procedurally barred by WIS. STAT. § 974.06(4). *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

Brown apparently fails to understand that he does not have an unlimited right to file successive appeals. As mentioned, we have already held that Brown's claims were procedurally barred by WIS. STAT. § 974.06(4), ***Witkowski***, and ***Escalona-Naranjo***—and we recently also specifically noted that Brown provided no legitimate reason for why his claims were not procedurally barred. *See, e.g.*, ***Brown***, No. 2013AP1106, at 1. Brown is abusing the judicial process by repeatedly litigating the same claims, and his repeated filings are burdensome on the court system.

Accordingly, we admonish Brown that should he repeat the claims that he previously made, or should we conclude in the future that Brown's litigation is frivolous, abusively repetitive, or otherwise improper, it may result in limitations on his access to the courts. There have been a number of cases in which we have limited future filings as a sanction, or have affirmed the circuit court's decision to do so, based upon the inherent authority of the courts to efficiently and effectively provide for the fair administration of justice. *See, e.g.*, ***State v. Casteel***, 2001 WI App 188, ¶¶19-27, 247 Wis. 2d 451, 634 N.W.2d 338.

Finally, Brown requests discretionary reversal pursuant to WIS. STAT. § 752.35, which gives this court the power, in an exceptional case, to grant discretionary reversal if it appears

from the record that the real controversy has not been fully tried, or that it is probable that justice for any reason has miscarried. Brown argues the real controversy was not fully tried because the jury had evidence that was not properly admitted, due to the circuit court's decision to allow the State to amend the Information. We have previously held that the court properly allowed the amendment of the Information, and Brown's request for discretionary reversal is yet another retread of his argument that the Information was improperly amended. The real controversy was fully tried, and Brown is not entitled to discretionary reversal.

Upon the foregoing,

IT IS ORDERED that the order 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