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April 20, 2021

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

2019AP2393

State of Wisconsin v. Larry B. Hooker, Jr. (L.C. # 2002CF435)

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).

Larry B. Hooker, *pro se*, appeals an order of the circuit court denying his motion for postconviction relief. Upon our review of the briefs and record, we conclude at conference that

this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

In 2002, Hooker was convicted of arson and two counts of first-degree recklessly endangering safety. The convictions were affirmed by this court, and Hooker's petition for review was denied. In 2005, Hooker filed a petition for writ of habeas corpus alleging ineffective assistance of appellate counsel. This court dismissed the petition. Hooker then filed a motion in the circuit court under WIS. STAT. § 974.06, requesting a new trial. The circuit court denied the motion, and this court affirmed that decision on appeal. Hooker then filed another postconviction motion pursuant to § 974.06 as well as a motion for postconviction discovery. Hooker alleged that the State violated its duty to disclose evidence in the form of lab test results from the Wisconsin State Crime Laboratory. Hooker sought copies of the lab reports, contending that they would show no liquid accelerant on the items sent to the crime lab. Those items were sent to the lab after a dog detected the presence of an accelerant. Hooker sought discovery of the results, arguing that they constituted newly discovered evidence. The circuit court denied the motion and this court upheld the circuit court's decision, concluding that Hooker's claims were procedurally barred.

Hooker then filed the "Petition for Writ of Habeas Corpus Pursuant to Wisconsin Statute 782.03," which underlies this appeal. (Bolding and Some Capitalization Omitted.) The motion alleged that Hooker was entitled to a new trial in the interest of justice because at trial, the State presented false evidence that Hooker used perfume as a liquid accelerant, contrary to the results

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

of the lab report that Hooker ultimately obtained. The circuit court denied Hooker's motion, reclassifying it as another WIS. STAT. § 974.06 motion, and stating that the motion was barred pursuant to *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Relying on this court's decision affirming the circuit court's denial of Hooker's previous postconviction motion, the circuit court found that the issue of whether a liquid accelerant was detected at the arson scene was previously litigated. This appeal follows.

On appeal, Hooker contends that his right to a fair trial was violated because: the State presented false evidence that Hooker used perfume as an accelerant for the fire, contrary to the lab reports that (according to Hooker) showed no accelerant was detected; the State failed to correct its error; and the jury convicted him as a result of believing the false evidence. Consequently, he contends that justice was miscarried and he is entitled to a new trial. Hooker also contends that the circuit court mischaracterized his habeas corpus petition as a WIS. STAT. § 974.06 motion.

The State notes that none of Hooker's previous postconviction motions argue that the State presented false evidence ultimately resulting in his conviction; thus, his arguments are procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), as opposed to *Witkowski*. Upon review of Hooker's previous postconviction motions, however, we conclude that while Hooker did previously raise the issue of whether an accelerant was used, he did so in the context of seeking postconviction discovery. In his current motion on appeal, Hooker argues that the State presented false evidence, failed to correct that evidence, and that the evidence contributed to his conviction. This claim was not previously raised, but, as the State notes, could have been previously raised, and is thus barred under *Escalona-Naranjo*.

A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion,” unless the defendant demonstrates a sufficient reason for failing to raise the issues previously. *Id.*, 185 Wis. 2d at 177. “Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation [that provides postconviction remedies].” *Id.* at 185.

Hooker argues that he could not previously raise his claim because he did not discover the crime lab report until after his previous postconviction motions were filed. We agree with the State that the record does not support Hooker’s claim. The report was discussed at trial by a witness called in Hooker’s defense. Hooker’s attorney had a copy of the report and provided it to him when requested. Hooker was therefore aware of the report’s existence and could have raised the issue in a prior motion.

In an attempt to circumvent the procedural bar, Hooker argues that this court should grant him relief in the interest of justice. In *State v. Henley*, 2010 WI 97, ¶75, 328 Wis. 2d 544, 787 N.W.2d 350, the supreme court explained that, “we do not recognize a broad, inherent power to order a new trial in the interest of justice at any time, unbound by concerns for finality and proper procedural mechanisms.” Thus, defendants must pursue postconviction relief using the appropriate procedural mechanisms available. Here, the proper mechanism was for Hooker to raise his claims in a prior postconviction motion. Because Hooker has not set forth a sufficient reason for failing to previously raise his current claim, his arguments are procedurally barred and accordingly we do not invoke our inherent authority to grant relief in the interest of justice.

As to Hooker’s claim that the circuit court mischaracterized his petition as a WIS. STAT. § 974.06 motion, we note that the postconviction court did so because Hooker is not entitled to

relief pursuant to WIS. STAT. § 782.03, as he claims. WISCONSIN STAT. § 782.02 provides that “[n]o person shall be entitled to prosecute such writ [of habeas corpus] who shall have been committed or detained by virtue of the final judgment or order[.]” Habeas corpus relief is not available if other remedies are. *State ex rel. Dowe v. Circuit Ct. for Waukesha Cnty.*, 184 Wis. 2d 724, 729, 516 N.W.2d 714 (1994). Hooker had the option of raising his current claims in a previous § 974.06 motion.

Accordingly, we affirm the order denying Hooker’s motion for postconviction relief.

IT IS ORDERED that the order 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