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DISTRICT IV

June 10, 2021

To:

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

2020AP920-CR

State of Wisconsin v. John L. Jacques (L.C. #2007CF734)

Before Blanchard, Kloppenburg, and Nashold, 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).

John Jacques appeals a circuit court order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2019-20).¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm.

In 2008, Jacques was convicted of using a computer to facilitate a child sex crime. Jacques appealed his conviction pro se and argued: (1) that the State withheld exculpatory evidence in the form of a computer application that would have permitted the jury to view animated emoticons in online chats between Jacques and an officer posing as a child, and (2) that trial counsel was ineffective for failing to ensure that the jury would be able to view the animated emoticons. *See State v. Jacques*, No. 2010AP82-CR, unpublished slip op. ¶1 (WI App March 10, 2011). This court affirmed Jacques' conviction. *Id.*

Jacques subsequently brought his current postconviction motion under WIS. STAT. § 974.06. As noted, the circuit court denied that motion in the order that Jacques now appeals.

As far as we can determine from Jacques' current postconviction motion and appellate briefing, the issues that Jacques now raises are substantially the same issues that were already litigated in his previous appeal. We decline to address those issues on the merits. Rather, we affirm based on *State v. Witkowski*, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991). Under *Witkowski*, “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *See id.* at 990.

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

To the extent that Jacques’ current postconviction motion or appellate briefing might be viewed as raising new issues that were not already litigated, we agree with the State that such new issues are procedurally barred because Jacques has not alleged a “sufficient reason” for failing to raise those issues previously. *See State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668. When, as here, “the defendant did file a motion under [WIS. STAT.] § 974.02 or a direct appeal or a previous motion under [WIS. STAT.] § 974.06, the defendant is barred from making a claim that could have been raised previously unless [the defendant] shows a sufficient reason for not making the claim earlier.” *Id.*; *see also State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 185, 517 N.W.2d 157 (1994) (discussing the “sufficient reason” requirement).

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals