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DISTRICT I

August 17, 2021

To:

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Circuit Court Judge
Electronic Notice

John D. Flynn
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John Barrett
Clerk of Circuit Court
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Corey Mendrell Welch 481266
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1397

State of Wisconsin v. Corey Mendrell Welch (L.C. # 2004CF6133)

Before Donald, P.J., Dugan 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).

Corey Mendrell Welch, *pro se*, appeals an order denying what he contends was a petition for *habeas corpus*. Welch contends that the circuit court erroneously determined that his claims were procedurally barred because it misconstrued his petition as a motion for postconviction relief pursuant to WIS. STAT. § 974.06 (2019-20).¹ Upon our review of the briefs and record, we

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

conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In 2004, the State filed sixteen charges against Welch, all related to a string of armed robberies. The trial court² granted the State's motion to sever the charges and the matter proceeded to two separate trials, where juries ultimately convicted Welch of twelve charges. Welch, through counsel, filed a postconviction motion seeking a new trial on the grounds that the trial court erred by severing the charges and by admitting certain other-acts evidence. The postconviction court denied the motion and this court affirmed.

Since then, Welch has filed numerous *pro se* postconviction motions and appeals. The motion underlying this appeal, titled, "Petition for Writ of Habeas Corpus Pursuant to Wis. Stats. 782.04 and 782.22," alleged that a pre-charging delay and the State's failure to give constitutional notice of new charges violated Welch's due process rights. (Capitalization and bolding omitted.) The petition also stated that Welch had no other adequate remedies available and that he was unable to previously raise his due process argument because of the unavailability of alibi witnesses who, as of the time Welch filed his petition, were available to testify.

The circuit court construed Welch's petition as a postconviction motion brought pursuant to WIS. STAT. § 974.06, noting that the "issues [Welch] raises could have been previously litigated," and were therefore procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d

² We refer to the court that presided over Welch's trial as the "trial court," the court that denied Welch's first postconviction motion as the "postconviction court," and the court that denied the motion underlying this appeal as the "circuit court."

168, 517 N.W.2d 157 (1994). The circuit court determined that “[h]abeas relief does not lie under these circumstances.” Welch now appeals.

On appeal, Welch contends that: (1) the circuit court erroneously exercised its discretion when it construed his *habeas corpus* petition as a WIS. STAT. § 974.06 postconviction motion and subsequently determined that his claims were procedurally barred; (2) he was prejudiced by the circuit court’s decision; (3) the circuit court is liable for damages; and (4) the previous unavailability of alibi witnesses constitutes a sufficient reason for failing to raise his constitutional claim in his direct appeal.

We agree with the postconviction court that Welch was not entitled to *habeas corpus* relief. Such relief “is available to a petitioner only under limited circumstances.” *State ex rel. Krieger v. Borgen*, 2004 WI App 163, ¶5, 276 Wis. 2d 96, 687 N.W.2d 79. First, “a person seeking *habeas corpus* relief must be restrained of his or her liberty[.]” *Id.* (italics added). Second, “the person must show that the restraint was imposed by a body without jurisdiction or that the restraint was imposed contrary to constitutional protections[.]” *Id.* Finally, “the person must show that there is no other adequate remedy available in the law.” *Id.* “Unless these criteria are met, the writ of *habeas corpus* is not available to the petitioner.” *Id.* (italics added). *Habeas corpus* relief is subject to the terms of WIS. STAT. § 974.06(8), which states:

A petition for a writ of *habeas corpus* or an action seeking that remedy [on] behalf of a person who is authorized to apply for relief by motion under this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.

Id. (italics added). “Additionally, in a postconviction setting, a petition for writ of *habeas corpus* will not be granted where (1) the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict.” *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12 (internal citation omitted).

Here, Welch had an adequate remedy in the form of his direct appeal. Welch’s supposed inability to locate alibi witnesses prior to his most recent filing does not constitute a sufficient reason for failing to raise his constitutional claims in a prior proceeding. Welch’s concerns would have been known to him at the time of his direct appeal and could have been raised then. Accordingly, we agree with the circuit court that habeas relief is not available as to Welch’s claims.

Moreover, we agree with the State that Welch cannot circumvent the *Escalona-Naranjo* bar by disguising a WIS. STAT. § 974.06 postconviction motion as a *habeas corpus* petition. WISCONSIN STAT. § 974.06 is the mechanism by which a prisoner may raise constitutional and jurisdictional claims after the time for a direct appeal has passed. *See State v. Henley*, 2010 WI 97, ¶52, 328 Wis. 2d 544, 787 N.W.2d 350. Since his conviction, Welch has filed numerous appeals and postconviction motions, yet Welch fails to provide a sufficient reason as to why his grievance with an alleged pre-charging delay and the State’s alleged failure to notify him of new charges could not have been raised sooner. Because Welch had multiple opportunities to raise

his claims in prior proceedings, Welch’s current motion does not provide a sufficient reason for permitting his instant litigation.³

Because the circuit court did not err, we need not consider Welch’s claim for damages.

For the foregoing reasons, we affirm the circuit court.

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

³ The State contends that Welch effectively attempts to relitigate the claim he raised in his direct appeal wherein he challenged the trial court’s decision to sever the charges against him. While it is unclear from Welch’s brief to this court whether his arguments indeed relate back to the severance issue, we note that such a challenge would also be procedurally barred because it was previously litigated. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).