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DISTRICT IV

September 2, 2021

To:

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Circuit Court Judge
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Erin Hanson
Assistant District Attorney
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You are hereby notified that the Court has entered the following opinion and order:

2020AP540-CR

State of Wisconsin v. John G. Dahlk (L.C. # 1993CF1604)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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 G. Dahlk appeals an order denying his motion for sentence modification. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Because Dahlk merely repackages arguments previously rejected in a prior appeal, we affirm.

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

In 1994, Dahlk received a twenty-seven-year indeterminate prison sentence. He sought relief from this court on multiple occasions. Of particular relevance, we affirmed the circuit court’s denial of Dahlk’s 2007 sentence modification motion in which he alleged that a 1994 change in parole policy constituted a new factor.² *State v. Dahlk*, No. 2007AP2035-CR, unpublished slip op. and order (WI App April 29, 2008). In rejecting Dahlk’s claim, we determined that the purported change in parole policy was not relevant to the circuit court’s sentence under *State v. Franklin*, 148 Wis. 2d 1, 14, 434 N.W.2d 609 (1989) (“[A] change in parole policy cannot be relevant to sentencing unless parole policy was actually considered by the circuit court.”). *Dahlk*, No. 2007AP2035-CR, at 3.

In 2019, Dahlk filed the sentence modification motion underlying this appeal. As he did in 2007, he argued that a 1994 change in the State’s parole eligibility policy constituted a new factor that warranted modification of his sentence. In denying this most recent motion, the circuit court determined that the sentencing court did not rely on Dahlk’s parole eligibility and therefore, “any purported change in parole policy” was not a new factor justifying sentence modification. Dahlk appeals.

We conclude that Dahlk’s arguments merely rehash those made in his 2007 sentence modification motion and related appeal and, as such, are procedurally barred. *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.”). Dahlk concedes that his new arguments overlap with those

² Dahlk relied on a 1994 letter from then-Governor Tommy Thompson noting that the policy of his Administration was “to keep violent offenders in prison as long as possible”

made in 2007 but suggests that his new-factor claim did not become “ripe” until 2018, when he was released pursuant to his mandatory release date. Dahlk’s attempt to repackage his 2007 arguments is both untethered from the facts of record and illogical. He cannot obtain relief by reframing his previously litigated challenge. *Id.*

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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