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DISTRICT I

November 16, 2021

To:

Hon. David A. Hansher
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

John D. Flynn
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Terrance L. Johnson
444 N. 30th St., Lower
Milwaukee, WI 53208-4209

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

2019AP2122 State of Wisconsin v. Terrance L. Johnson (L.C. # 2011CF1601)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Terrance L. Johnson, *pro se*, appeals from an order of the circuit court that denied 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] The order is summarily affirmed.

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

In March 2012, a jury convicted Johnson on thirteen charges: three counts of theft by false representation, four counts of forgery (uttering), and six counts of identity theft. The State submitted a written sentence recommendation with a "net overall effect" of ten years of initial confinement and ten years of extended supervision. After detailing the various sentencing factors and objectives it had considered, the trial court started its pronouncement of sentence by saying, "I'm gonna follow the State's recommendation in this case." It imposed a series of concurrent and consecutive sentences, stating that the total "should come out to 10 years initial confinements, 10 years of extended supervision. That's the intent of the court[.]"

Representing himself, Johnson filed a postconviction motion in February 2013, challenging the sufficiency of the evidence on twelve of the counts. His motion and a motion for reconsideration were denied. Johnson appealed in June 2013; this court ultimately affirmed. *See* ***State v. Johnson***, No. 2013AP1429-CR, unpublished slip op. (WI App July 29, 2014).

Shortly after filing the notice of appeal, Johnson in July 2013 moved to amend the judgment of conviction. He asserted that the State's recommendation was "to max [him] out at Ten (10) years" of imprisonment—five years of initial confinement and five years of extended supervision—but the sentence structure as recorded on the judgment of conviction actually imposed twelve years of imprisonment. The trial court denied the motion, explaining that the State's recommendation was for ten years of initial confinement and ten years of extended supervision, and that "[n]owhere in the sentencing transcript can it be reasonably interpreted that the court understood the State's recommendation to mean five years [of] initial confinement and five years of extended supervision." Johnson did not appeal this order.

Johnson continued litigation in the following years, but the next event relevant to this appeal is a "request for amended judgment of conviction" that Johnson filed in February 2016. He again argued that the trial court had imposed a ten-year sentence but the judgment reflected a twelve-year sentence. The circuit court[2] noted that the State had "recommended an overall sentencing consisting of ten years of initial confinement and ten years of extended supervision" and that the trial court had "intended to follow the State's overall recommendation." However, because of the structure articulated by the trial court, the Department of Corrections was running counts three through thirteen as concurrent with each other, resulting in a net effect of six years' initial confinement and six years' extended supervision. Thus, the circuit court ordered the judgment of conviction amended so that the concurrent/consecutive scheme actually reflected the trial court's intended ten years of initial confinement and ten years of extended supervision. Johnson did not appeal this order.

He did, however, begin a course of litigation that has resulted in multiple motions, which, although they had varying titles, all sought in some way to undo the circuit court's February 2016 order. In May 2016, Johnson moved for sentence modification, alleging that the circuit court's increasing of his sentence constituted a double jeopardy violation. The circuit court ultimately denied the motion, explaining that it did not increase Johnson's sentence—the trial court had always intended a twenty-year sentence. Johnson did not appeal this order.

[2] The Honorable David A. Hansher presided at trial and imposed sentence; he also entered the order that is currently before us on appeal. Judge Hansher will be referred to as the trial court. The Honorable Dennis R. Cimpl entered the February 2016 order, as well as several subsequent orders, and will be referred to as the circuit court.

In October 2016, Johnson filed another motion for sentence modification, the first seven pages of which were the same motion from May. The circuit court denied this motion for the same reasons it had denied the previous motion. Johnson did not appeal this order.

In March 2017, Johnson filed a "motion to vacate sentence." He argued that the trial court had not intended to impose a twenty-year sentence and asked to have the February 2016 order vacated. The circuit court denied the motion and cautioned Johnson that further requests that effectively sought reconsideration of the February 2016 order "may result" in an assessment of costs against him. Johnson did not appeal this order.

In November 2017, Johnson filed another motion to vacate his sentence, claiming he was being punished for mistakes made at sentencing that he did not cause. The circuit court denied the motion and stated that further challenges to the February 2016 order "will result" in an assessment of costs. Johnson did not appeal this order.

In October 2018, Johnson filed a motion to "clarify the record and to establish the legitimacy" of the February 2016 order. He argued that the trial court had intended to impose six years' initial confinement and six years' of extended supervision, as evidenced by the way it had described the sentence at the sentencing hearing, and that the circuit court was misinterpreting the trial court's intent. The circuit court, noting this was now Johnson's fifth challenge to the February 2016 order, denied the motion and found it to be frivolous, assessing fifty dollars in costs. Johnson did not appeal this order.

In November 2018, Johnson filed a motion to reinstate the original judgment of conviction, complaining that the State had not objected when the trial court was setting the sentence structure. This motion was reviewed by the trial court itself, which stated that it had

indeed intended to impose ten years of initial confinement and ten years of extended supervision, so the circuit court had properly recognized its original sentencing intent. Thus, the trial court denied the motion. Johnson moved for reconsideration, which the trial court also denied. In the order denying reconsideration, the trial court stated, "This is the court's final decision in this matter. Consequently, the defendant is advised that further challenges to [the circuit court's] February 3, 2016 order or to the amended judgment dated February 9, 2016 will not be entertained and will result in an assessment of costs." Johnson did not appeal this order.

In January 2019, Johnson filed a "motion to vacate an illegal sentence," contending that the circuit court was not authorized by law to modify his original sentence. The trial court denied the motion and assessed another fifty dollars in costs. Johnson did not appeal this order.

In October 2019, Johnson filed a "[WIS. STAT. §] 974.06 motion for sentence modification." He argued that the circuit court "lacked legal jurisdiction" to amend his sentence in the absence of a new factor. The trial court denied the motion for "the reasons set forth in the court's prior decisions." The trial court imposed yet another fifty dollars in costs "as a sanction for taxing limited court resources with matters that have previously been litigated." Now, following his eighth unsuccessful attempt to undo the February 2016 order, Johnson appeals.

A defendant must raise all grounds for relief in his or her first postconviction motion and/or direct appeal unless there is a sufficient reason for not doing so. *See* WIS. STAT. § 974.06(4); ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Johnson does not explain why any of his concerns in his latest motion, to the extent they are new, were not or could not have been raised in prior litigation. In addition, "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding 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). Since his conviction, Johnson has litigated the matter of his sentence structure at least ten times; nine times he left the results unchallenged.[3] He is not permitted to continue revisiting this issue *ad infinitum*. The circuit court did not err when it denied the latest motion.[4]

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 procedural history recited herein does not include at least seven *other* postconviction challenges Johnson made to his conviction and/or sentence.

[4] We additionally note that when we are faced with an ambiguous oral pronouncement of sentence, "we should look for the trial court's sentencing intent[.]" ***State v. Oglesby***, 2006 WI App 95, ¶20, 292 Wis. 2d 716, 715 N.W.2d 727. Here, the oral pronouncement of sentence was ambiguous because despite the trial court stating that it intended to follow the State's recommendation, and despite further stating that its sentence should total ten years of initial confinement and ten years of extended supervision, the way it structured those sentences did not match the intent. However, any ambiguity in this case is clearly and easily resolved because the trial court *expressly stated its intent at the time of sentencing* to impose a total of twenty years of imprisonment, not twelve.