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DISTRICT I

May 24, 2022

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

2021AP1358 State of Wisconsin v. Roy James Jones (L.C. # 1995CF955367)

Before Brash, C.J., Donald, P.J., and White, 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).

Roy James Jones, *pro se*, appeals from orders of the circuit court that denied his WIS. STAT. § 974.06 motions for postconviction relief and for reconsideration. 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] Upon review, these orders are summarily affirmed.

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

Jones is serving a 143-year sentence, imposed in 1997, for convictions on one count of first-degree sexual assault of a child, two counts of first-degree sexual assault of a child while armed, two counts of kidnapping while armed, one count of sexual assault, and one count of attempted sexual assault, all as a habitual criminal. This appeal is the ninth time that Jones has sought relief from this court.[2]

In June 2021, Jones filed a WIS. STAT. § 974.06 motion for relief, seeking a new trial based on prosecutorial misconduct and fraud on the court, which he claimed was shown by newly discovered evidence. Specifically, Jones claimed that one of the State's law enforcement witnesses committed perjury at trial by testifying he had an arrest warrant for Jones. This warrant was supposedly a violation-of-probation warrant. Jones's "newly discovered evidence" consists of two letters from Probation/Parole Agent Christy Leskow, who indicated that her files showed no warrants issued for Jones during his probation period. Jones thus contends that the State committed prosecutorial misconduct in allowing the officer to "willingly [perjure] himself" by testifying, and perpetrated a fraud on the court by representing, that there was a warrant for Jones. Jones further asserts that the lack of a warrant meant the police illegally entered his home. The circuit court denied Jones's motion as procedurally barred under ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). In his motion for reconsideration, Jones re-emphasized his new evidence. The circuit court denied reconsideration. Jones appeals.

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[2] *See* ***State v. Jones***, No. 1998AP685-CR, unpublished slip op. (WI App June 29, 1999); ***State v. Jones***, No. 2004AP1836, unpublished slip op. (WI App Dec. 20, 2005); ***State v. Jones***, No. 2007AP2097-CR, unpublished slip op. (WI App Sept. 23, 2008); ***State ex rel. Jones v. Pollard***, No. 2008AP2589-W, unpublished op. and order (WI App Dec. 30, 2008); ***State v. Jones***, No. 2010AP779-CR, unpublished slip op. (WI App Jan. 11, 2011); ***State v. Jones***, No. 2011AP2572, unpublished slip op. (WI App Nov. 6, 2012); ***State v. Jones***, No. 2013AP1794-CR, unpublished op. and order (WI App July 29, 2014); and ***State v. Jones***, No. 2017AP2337-CR, unpublished op. and order (WI App Mar. 5, 2019.)

Jones's evidence in not newly discovered. He previously and specifically relied on Leskow's letters, dated 2002 and 2003, to support a postconviction motion filed in June 2004. In our decision affirming the circuit court's denial of the motion, we explained:

> The evidence that Jones says is newly discovered is that the officer who arrested him did not have a warrant to do so. As the State argues, however, this fact is not material because the officer had probable cause to arrest him. *See* WIS. STAT. § 968.07(1)(d). Jones has not established that this evidence was material, nor that it is reasonably probable that a different result would have been reached at trial. Since the evidence was not material, Jones is not entitled to a new trial based on newly discovered evidence.
>
> The next issue Jones raises is that the State knowingly allowed false testimony in court. He asserts that the State allowed the officer who arrested him to testify that he had an arrest warrant when he did not. Jones's allegations do not establish that the State acted intentionally, or withheld any evidence from him. The evidence at most establishes a mistake. Further, Jones has not demonstrated how this testimony, even if false, affected the outcome of the trial. As we discussed previously, even if the officer did not have a warrant, the arrest was valid under the probable cause standard.

State v. Jones, No. 2004AP1836, ¶¶11-12, unpublished slip op. (WI App Dec. 20, 2005). In other words, Jones has already litigated issues stemming from his contention that Leskow's letters show no warrant for him. However, "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." *See* ***Witkowski***, 163 Wis. 2d at 990. The circuit court did not err in denying the motion.

Jones also argues that the orders denying his motions are non-final and the case should therefore be returned to the circuit court for further consideration of his claims. An appeal of right can only be taken from a final judgment or order. *See* WIS. STAT. § 808.03(1). A final judgment or order is one that "disposes of the entire matter in litigation as to one or more of the parties[.]" *See* ***id.*** Jones contends the circuit court's orders are non-final because they do not

specifically address the merits of his prosecutorial misconduct and fraud-on-the-court claims. He also defies this court to identify the finality statement in either order. *See* ***Wambolt v. West Bend Mutual Ins. Co.***, 2007 WI 35, ¶44, 299 Wis. 2d 723, 728 N.W.2d 670 ("Going forward, we therefore will require that final orders and final judgments state that they are final for purposes of appeal.").

Jones's current postconviction motion, however, is simply a repackaging of his 2004 claim that there was no valid warrant issued for his arrest. He is procedurally barred from relitigating that issue, no matter how he might repackage it. No further consideration of the merits of the claims is required. In addition, the absence of a finality statement does not make an order non-final. *See* ***Admiral Ins. Co. v. Paper Converting Mach. Co.***, 2012 WI 30, ¶29, 339 Wis. 2d 291, 811 N.W.2d 351. In postconviction proceedings under WIS. STAT. § 974.06, "the order denying the motion is final for purposes of appeal." *See* ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994); *see also* § 974.06(7) ("An appeal may be taken from the order entered on the motion as from a final judgment.").

Upon the foregoing, therefore,

IT IS ORDERED that the orders are 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