

OFFICE OF THE CLERK WISCONSIN COURT OF APPEALS

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DISTRICT I

September 20, 2022

To:

Hon. Janet C. Protasiewicz Circuit Court Judge Electronic Notice

George Christenson Clerk of Circuit Court Milwaukee County Safety Building Electronic Notice

John D. Flynn Electronic Notice Christine A. Remington Electronic Notice

Robert Lee Hamilton 149550 Jackson Correctional Inst. P.O. Box 233 Black River Falls, WI 54615-0233

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

2021AP366-CR

State of Wisconsin v. Robert Lee Hamilton (L.C. # 1996CF966444)

Before Brash, C.J., Dugan 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).

Robert L. Hamilton, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2019-20).¹ Hamilton argues: (1) the State failed to prove that he was a repeat offender and, therefore, his sentence was unlawful; (2) the circuit court sentenced him based on inaccurate information (the allegedly incorrect information that he was a repeat offender); (3) the inaccurate information is a new factor justifying sentence

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

modification; (4) his trial counsel was ineffective for overlooking the allegedly inaccurate information at sentencing; and (5) he is entitled to an evidentiary hearing on his claims. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

On December 27, 1996, Hamilton pled guilty to five crimes after he violently sexually assaulted a woman, attempted to kill her, and attacked a police officer. He was convicted of first-degree sexual assault, attempted first-degree intentional homicide while armed, first-degree recklessly endangering safety while armed, armed robbery with threat of force, and resisting an officer. All of his convictions were as a repeat offender because Hamilton had a prior conviction for felony theft. The circuit court sentenced Hamilton to a global indeterminate term of one hundred and fifty-five years of imprisonment.

After his conviction, Hamilton filed a direct appeal. We affirmed his conviction and rejected his arguments that he should be allowed to withdraw his pleas. Hamilton then filed a *pro se* postconviction motion pursuant to WIS. STAT. § 974.06, which the circuit court denied. Hamilton subsequently filed the current postconviction motion, which the circuit court also denied. This appeal follows.

The issues Hamilton raises all relate to his assertion that the State failed to prove he was a repeat offender. Hamilton previously raised the same issues in his first *pro se* postconviction motion. He argued that the State failed to prove he was a repeat offender. "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). Hamilton has couched the issues he previously raised in different legal

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terms related to his sentencing, but the claims remain the same. Because Hamilton

unsuccessfully litigated these issues in a prior collateral attack on his conviction, we will not

consider them again.

IT IS ORDERED that the order of the circuit court 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

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