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DISTRICT I

December 13, 2022

To:

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Circuit Court Judge
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Eric G. Perkins 567261
Columbia Correctional Center
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You are hereby notified that the Court has entered the following opinion and order:

2020AP2097

State of Wisconsin v. Eric G. Perkins (L.C. # 2012CF5119)

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).

Eric Perkins, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2019-20).¹ Perkins argues that he should be allowed to withdraw his guilty pleas based on newly discovered evidence. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

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

Perkins, Sam Evans, Lavonte Smith, and Freddie Reynolds Jr., were all charged with crimes related to the 2012 shooting death of Thomas Martin and the shooting injury sustained by D.G. After pleading guilty, Perkins was convicted of one count of second-degree reckless homicide and one count of second-degree recklessly endangering safety, both as a party to a crime and with use of a dangerous weapon. Perkins brought this postconviction motion, which is his third challenge to his conviction, arguing that he should be allowed to withdraw his guilty pleas based on newly discovered evidence. The circuit court denied the motion. This appeal follows.

“The decision to grant or deny a motion for a new trial based on newly-discovered evidence is committed to the circuit court’s discretion.” *State v. Plude*, 2008 WI 58, ¶31, 310 Wis. 2d 28, 750 N.W.2d 42. To obtain a new trial based on newly discovered evidence, a defendant must prove that: “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *Id.*, ¶32 (citation omitted). If the defendant establishes all of these criteria, then the court must determine “whether a reasonable probability exists that had the jury heard the newly-discovered evidence, it would have had a reasonable doubt as to the defendant’s guilt.” *Id.*

Perkins contends that an affidavit from his co-defendant Reynolds constitutes newly discovered evidence. In the affidavit, Reynolds states that he was the only person who fired the shots that killed Thomas Martin and injured D.G.

Perkins has not met his burden of showing that the information Reynolds presents in his affidavit is material to an issue in the case. *See id.* (stating that the evidence must be material to

an issue in the case). Perkins was convicted as a party to a crime and, as such, Perkins is guilty of the crimes regardless of whether Reynolds fired the shots or Perkins fired the shots. *See* WIS. STAT. § 939.05. As the circuit court explained when it denied the postconviction motion: “[T]he State did not have to prove the defendant was the actual shooter in order to obtain a homicide conviction because the defendant was charged and convicted *as a party to a crime*.” (Emphasis in the original.) Even if Reynolds was the only shooter, as he now alleges, Perkins was properly convicted as a party to a crime for his role, to which he admitted when he entered his pleas. The information Reynolds has provided in no way negates Perkins’ legal culpability, and is thus immaterial to Perkins’ convictions. Perkins has failed to prove that he meets the *Plude* criteria for the admission of newly discovered evidence.

Perkins attempts to characterize Reynolds’ affidavit as newly discovered recantation evidence. There is a higher standard when the newly discovered evidence is the recantation of a witness because recantations are inherently unreliable. *State v. McCallum*, 208 Wis. 2d 463, 476, 561 N.W.2d 707 (1997). Regardless of how Reynolds’ statements are characterized, however, Perkins is not entitled to relief because Reynolds’ statements do not exonerate Perkins of the crimes to which he pled guilty.²

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

² We note that Perkins did not file a reply brief or a letter indicating that no reply brief would be filed as required by WIS. STAT. RULE 809.19(4)(a) (“The appellant shall file a reply brief, or a statement that a reply brief will not be filed[.]”).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals