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DISTRICT II

December 21, 2022

To:

Hon. Gerad Dougville
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Dennis E. Jones, #223971
Redgranite Correctional Inst.
P.O. Box 925
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You are hereby notified that the Court has entered the following opinion and order:

2021AP2148-CR

State of Wisconsin v. Dennis E. Jones (L.C. #1993CF597)

Before Gundrum, P.J., Grogan and Lazar, 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).

Dennis E. Jones appeals from an order of the circuit court denying his postconviction motion, in which he challenges his sentence as excessive. Jones also appeals from an order denying his motion 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 We affirm.

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

Following a jury trial, Jones was convicted of armed robbery, possession of a firearm as a felon, and possession of a short-barreled rifle, all as a repeater. In 1996, he filed a pro se motion for postconviction relief raising, inter alia, a claim that the State failed to prove his status as a repeat offender and a claim of ineffective assistance of counsel. We treated Jones's subsequent appeal as a direct appeal from the judgment of conviction and an appeal from the order denying his motion for postconviction relief. *State v. Jones*, No. 96-3443-CR, unpublished slip op. (WI App June 17, 1998). We affirmed the judgment of conviction and the order, and the Wisconsin Supreme Court denied Jones's petition for review.

In 2000, Jones filed a petition for a writ of habeas corpus in this court asserting a claim that he had been denied his right to counsel in his direct appeal. We denied the petition. Jones subsequently filed a petition for a writ of habeas corpus in federal court, and that court granted the petition and ordered that Jones be released from prison unless within 120 days the "State ... affords [him] a new appeal with the assistance of appointed counsel." See *Jones v. Berge*, 246 F. Supp. 2d 1045, 1059 (E.D. Wis. 2003).

Jones's appellate rights were reinstated, and counsel was appointed to represent him. Counsel was subsequently permitted to withdraw, and in 2004, Jones again moved pro se for postconviction relief. On appeal, we concluded he "knowingly, intelligently, and voluntarily waived his right to be represented in this appeal" and, thus, we "affirm[ed] all of our rulings in his previous appeal, and incorporate[d] our decision from that appeal as our decision in this appeal." *State v. Jones*, No. 2004AP1593-CR, unpublished slip op. ¶7 (WI App Apr. 5, 2006). We also affirmed the order of the circuit court as to new claims Jones had raised. *Id.*, ¶¶8-17.

In 2014, Jones filed a pro se postconviction motion asserting that his sentences were improperly imposed consecutive to one another. We affirmed the decision of the circuit court, concluding that “both the written judgment and the [circuit] court’s oral pronouncement reflect its intent to impose consecutive sentences.” *State v. Jones*, No. 2014AP668-CR, unpublished op. and order at 1 (WI App Dec. 17, 2014).

Finally, Jones filed this pro se motion for postconviction relief in July 2021, challenging his sentence as excessive because, he claims, the repeater portion of his sentence was not presented or proved by the State and his convictions for both felon in possession of a firearm and possession of a short-barreled rifle violate WIS. STAT. § 939.71 and his right to be free from double jeopardy. The circuit court summarily denied the motion on the basis that the issues raised by Jones had been raised by him in prior postconviction proceedings. Jones appeals.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or on direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185. Additionally, a defendant may not relitigate a matter previously litigated. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Whether a defendant’s claim is procedurally barred and whether a sufficient reason exists for the failure to previously assert the claim are questions of law we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶¶9, 16, 331 Wis. 2d 640, 794 N.W.2d 920.

Applying these principles to the case at hand, we conclude that Jones’s latest postconviction motion is procedurally barred. As to his challenge to his repeat offender status, he previously litigated this claim, and we concluded “[t]here [wa]s no merit to Jones’[s] claim that he was not properly sentenced as a repeat offender.” *Jones*, No. 2004AP1593-CR, ¶7 (incorporating *Jones*, No. 96-3443-CR, at 4). Jones asserts, however, that his challenge to the repeater enhancements is not “that there was insufficient proof of them,” as he argued previously, but “that there was never a hearing on the matter, period; that there was no finding made by the Court that he was a repeater; and that the judgment of conviction erroneously records that the jury made the finding.” This is little more than a “rephras[ing] or re-theoriz[ing]” of the claim Jones already raised, and he may not relitigate a matter previously litigated, “no matter how artfully [he] may rephrase the issue.” See *Witkowski*, 163 Wis. 2d at 990, 992. Furthermore, to the extent this could be considered a new issue, he has not even asserted, much less shown, a sufficient reason for failing to raise it in any of his previous motions. See *Escalona-Naranjo*, 185 Wis. 2d at 185. This issue is procedurally barred by *Escalona-Naranjo*. See *id.*

As to Jones’s claim that his convictions for both felon in possession of a firearm and possession of a short-barreled rifle violate WIS. STAT. § 939.71 and his right to be free from double jeopardy, Jones acknowledges he has not raised this issue in any of his previous motions. Because he again has not even asserted, much less shown, a sufficient reason for failing to do so, this claim also is barred by *Escalona-Naranjo*. See *Escalona-Naranjo*, 185 Wis. 2d at 185.

Therefore,

IT IS ORDERED that the orders of the circuit court 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