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DISTRICT II

February 1, 2023

To:

Hon. Jodi L. Meier
Circuit Court Judge
Electronic Notice

John W. Kellis
Electronic Notice

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

Andre W. Warfield, #481921
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2022AP213

State of Wisconsin v. Andre W. Warfield (L.C. #2005CF191)

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

Andre W. Warfield appeals from an order of the circuit court denying the motion for reconsideration he filed after the court denied his motion for postconviction relief. 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.

In 2005, a jury convicted Warfield of kidnapping, armed burglary, physical abuse of a child, conspiracy to commit armed robbery with use of force, and seven counts of taking

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

hostages. By direct appeal, he contended the trial evidence was insufficient to support the jury verdicts on the hostage-taking and kidnapping charges, and in 2007, we rejected his contentions and affirmed. *State v. Warfield*, No. 2006AP660-CR, unpublished slip op. (WI App Jan. 31, 2007).

In 2011, Warfield filed a WIS. STAT. § 974.06 postconviction motion challenging the circuit court's subject matter jurisdiction and asserting that trial counsel provided him ineffective assistance. The circuit court denied the motion, and we subsequently dismissed Warfield's appeal because he failed to comply with our orders and the Rules of Appellate Procedure. *State v. Warfield*, No. 2013AP1690, unpublished op. and order (WI App Apr. 8, 2014).

In April 2015, Warfield filed a postconviction motion seeking a new trial in the interest of justice, specifically challenging the racial makeup of the jury and jury pool. The circuit court denied his motion, and we affirmed. *State v. Warfield*, No. 2015AP1163, unpublished op. and order (WI App Mar. 9, 2016).

In December 2016, Warfield again challenged his convictions. In a WIS. STAT. § 974.06 motion, he challenged the circuit court's subject matter jurisdiction on the same grounds as he had in 2011 and again challenged counsel's effectiveness. He also reasserted that the evidence at trial was insufficient to support his convictions and further argued his entitlement to a new trial based on newly discovered evidence. The circuit court denied this motion and explained to Warfield that it had already considered and rejected these claims. We again affirmed. *State v. Warfield*, No. 2017AP2038, unpublished op. and order (WI App Sept. 12, 2018).

In 2019, Warfield filed another WIS. STAT. § 974.06 motion, rehashing prior arguments related to newly discovered evidence and ineffective assistance of counsel. He added new,

undeveloped arguments related to his confrontation right as well as allegations of misconduct by the State and circuit court judge. At a hearing related to the motion, the circuit court emphasized to Warfield that his issues had been dealt with previously and “there is nothing that you have pled in your postconviction motion that is new or that’s not been barred already.” We affirmed, stating his claims had been previously litigated and thus were procedurally barred. *State v. Warfield*, No. 2019AP1405, unpublished op. and order (WI App Oct. 21, 2020). Additionally, pursuant to a request from the State, we warned Warfield “that further appeals in this case may result in sanctions, including restricting further access to the courts in the manner set forth in [*State v.*] *Casteel*, [2001 WI App 188, 247 Wis. 2d 451, 634 N.W.2d 338] and imposition of penalties or costs.” *Warfield*, No. 2019AP1405, at 3-4.

Warfield now has filed yet another WIS. STAT. § 974.06 motion, asserting ineffective assistance of trial counsel based on counsel’s failure to investigate and call at trial “alibi” witness Terez Cook and, alternatively, newly discovered evidence—Cook’s affidavit stating Cook was with Warfield the night of the charged burglary and robbery and Warfield was in the wrong place at the wrong time—even though he at the same time appears to concede that the evidence at issue does not constitute newly discovered evidence. The circuit court denied the motion without a hearing, pointing out that he “has already litigated the issue of ineffective assistance of counsel and ... has not presented evidence that was newly discovered.” Warfield did not appeal. Instead, he filed a motion for reconsideration, essentially restating his newly discovered evidence

and ineffective assistance of counsel claims. The circuit court summarily denied the motion, and Warfield appeals.²

At the outset, we note that “[n]o right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered.” *Silverton Enters. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The reason for this is “to prevent a party from extending the time to appeal by filing a motion for reconsideration.” *La Crosse Tr. Co. v. Bluske*, 99 Wis. 2d 427, 429, 299 N.W.2d 302 (Ct. App. 1980). Whether a party has properly appealed is a question of law. *State v. Scaccio*, 2000 WI App 265, ¶4, 240 Wis. 2d 95, 622 N.W.2d 449.

In his motion for reconsideration, Warfield asserted that “the newly discovered evidence in the form of the affidavit of [Cook] for the defendant more than fulfils the minimum requirements to warrant a new trial” and that “counsel’s refusal to pursue ‘alibi defense’ that le[d] to conviction[] was the result of ineffective assistance of counsel.” Because this is nothing but a rehash of the same matters as in his denied WIS. STAT. § 974.06 motion, the order denying his motion for reconsideration is not appealable, and we must dismiss it. See *Harris v. Reivitz*, 142 Wis. 2d 82, 87, 417 N.W.2d 50 (Ct. App. 1987).

We previously granted the State’s request to warn Warfield that continued litigation of this case may result in us imposing limitations on future appeals pursuant to our decision in *Casteel*, 247 Wis. 2d 451, ¶25. At that time, we put Warfield “on notice that further appeals in

² To the extent Warfield appeals from the order denying his WIS. STAT. § 974.06 motion, such an appeal is untimely as it was filed more than forty-five days after entry of the circuit court’s order summarily denying the motion. See WIS. STAT. §§ 808.04(1), 809.10(1)(e).

this case may result in sanctions, including restricting future access to the courts in the manner set forth in *Casteel*, and imposition of penalties or costs. *See id.*; *see also* WIS. STAT. RULES 809.25(3), 809.83(2).” *Warfield*, No. 2019AP1405, at 3-4. In this current appeal, the State asks us to “impose a properly tailored sanction or restriction to prevent Warfield’s further abuse of the appellate process.” We agree that this further step is appropriate. Because Warfield, after being previously warned, has continued to abuse the appellate process with his repetitive litigation of the same issues, we now order that

no further filings will be accepted from him unless he submits by affidavit all of the following:

1. A copy of the circuit court’s written decision and order he seeks to appeal,
2. A statement setting forth the specific grounds upon which this court can grant relief,
3. A statement showing how the issues sought to be raised differ from issues raised and previously adjudicated, and
4. A statement of why any new claims so raised are acceptable under [*State v.*] *Escalona-Naranjo*, 185 Wis. 2d [168,] 184-86 [517 N.W.2d 157 (1994)].

Upon review of those documents, if this court determines that [Warfield] states no claim, defense or appeal upon which we may grant relief, we will refuse to accept the filing. If we cannot determine from the submitted documents whether the appeal has merit, we may require additional documents.

Casteel, 247 Wis. 2d 451, ¶¶25-26 (citation omitted).

Therefore,

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

IT IS FURTHER ORDERED that no further filings will be accepted from Warfield unless he submits by affidavit the items specifically identified in this order.

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

Sheila T. Reiff
Clerk of Court of Appeals