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DISTRICT IV

May 4, 2023

To:

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Circuit Court Judge
Electronic Notice

Tina McDonald
Clerk of Circuit Court
Grant County Courthouse
Electronic Notice

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Titus Henderson 299317
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P.O. Box 19033
Green Bay, WI 54307-9033

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

2020AP1792 State of Wisconsin v. Titus Henderson (L.C. # 2012CF253)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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).

Titus Henderson, pro se, appeals a circuit court order denying his postconviction motion. He argues that there is newly discovered evidence and that the court erred by denying his motion without a hearing. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted. We cite the current version of the statutes for ease of reference.

In 2013, Henderson was convicted of battery by a prisoner for an incident in which he kicked a correctional officer. He appealed pro se, and as relevant here, he challenged the validity of his conviction by arguing that the circuit court and district attorney had not filed oaths of office or bonds pursuant to WIS. STAT. § 19.01. *See* ***State v. Henderson***, No. 2013AP2698-CR, unpublished op. and order at 1-2 (WI App April 25, 2016). We summarily affirmed. ***Id.*** at 1. We concluded that § 19.01 did not, as Henderson believed, require judges and district attorneys to file oaths and bonds. ***Id.*** at 2. We explained that the statute instead specifies "*what form* oaths and bonds are to take, and *where* they are to be filed, *if they are required by other statutory provisions*." ***Id.*** We noted that a different statute, WIS. STAT. § 757.02, requires judges to take and file an oath of office, but it does not require judges to file bonds. ***Id.*** We also noted that Henderson had not identified any other statute requiring district attorneys to file bonds. ***Id.*** Finally, we concluded that the record showed that the State had produced copies of the judge's oath of office and the district attorney's oath of office. ***Id.***

In his current postconviction motion under WIS. STAT. § 974.06, Henderson claimed that there is newly discovered evidence relating to the oaths of office. He alleged that the circuit court judge and district attorney "conspired and submitted forged/back-dated Oaths of Office … to obtain jurisdiction of the case by fraud." He also alleged that there is evidence "that court documents [were] forged and signed by [the district attorney] to obtain jurisdiction." The court denied Henderson's motion without a hearing.

On appeal, Henderson continues to maintain that there is newly discovered evidence. Additionally, he argues that the circuit court erred by denying his motion without a hearing. We address each argument in turn.

"In order to set aside a judgment of conviction based on newly-discovered evidence, the newly-discovered evidence must be sufficient to establish that a defendant's conviction was a 'manifest injustice.'" ***State v. Plude***, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (quoted source omitted). More specifically, the defendant must establish 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 (quoted source omitted). "If the defendant is able to prove all four of these criteria, then it must be determined 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.***

"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." ***Id.***, ¶31. We will uphold a discretionary decision "unless it can be said that no reasonable judge, acting on the same facts and underlying law, could reach the same conclusion." ***State v. Jeske***, 197 Wis. 2d 905, 913, 541 N.W.2d 225 (Ct. App. 1995).

As noted above, Henderson contends that there is newly discovered evidence that the circuit court and the district attorney conspired to submit forged or backdated oaths of office. However, Henderson does not show that such evidence, whether new or old, exists. Rather, he makes a conclusory assertion, based on his own affidavit, that the oaths of office were forged or backdated.

Henderson asserts that there is a federal district court decision in which the federal court found that prison officials forged incident reports. He apparently views this decision as newly discovered evidence. However, it is unclear how forged reports by prison officials would be

relevant to whether the circuit court or district attorney forged their oaths of office. If Henderson means to argue that the prison incident reports are relevant because the prosecution relied on the reports in charging him or at trial, his argument is not persuasive because the federal court decision does not establish that any reports were forged. The State has provided excerpts of the federal court decision. It shows that the federal court granted summary judgment in favor of the prison officials based, in part, on the court's conclusion that there was no reasonable inference from the evidence in that case that the officials fabricated reports.

For these reasons, we conclude that Henderson has not established that there is any new, material evidence. Accordingly, we also conclude that the circuit court properly exercised its discretion in declining to grant a new trial based on newly discovered evidence.

We turn to Henderson's argument that the circuit court erred by denying his postconviction motion without a hearing. The court has discretion to deny a hearing if the motion "does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief[.]" ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

Here, we conclude that the circuit court reasonably exercised its discretion to deny a hearing, both because Henderson's motion allegations are conclusory and because the record as a whole conclusively demonstrates that he is not entitled to relief. Henderson's allegations are conclusory for the reasons already explained. And, the record conclusively demonstrates that

Henderson is not entitled to relief because this court already decided the oath-of-office issue against him and because the State previously produced copies of the oaths of office.[2]

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals

[2] Henderson also claims that he was denied his right to an impartial judge. However, he does not develop arguments addressing the relevant legal standards for judicial bias. Accordingly, he has not met his burden to overcome the presumption that the circuit court judge in his case acted fairly, impartially, and without prejudice. *See* ***State v. Herrmann***, 2015 WI 84, ¶24, 364 Wis. 2d 336, 867 N.W.2d 772.