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DISTRICT I

August 29, 2023

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Milwaukee County Safety Building
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Jared J. Lanier-Cotton 675707
Fox Lake Correctional Inst.
P.O. Box 200
Fox Lake, WI 53933-0200

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

2022AP1723

State of Wisconsin v. Jared J. Lanier-Cotton (L.C. # 2018CF2604)

Before White, C.J., Donald, P.J., and Dugan, 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).

Jared L. Lanier-Cotton, *pro se*, appeals an order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2021-22).¹ After review of the briefs and record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In December 2018, a jury found Lanier-Cotton guilty of one count of substantial battery with the intent of bodily harm, one count of witness intimidation by use of force, one count of

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

felony bail jumping, and one count of battery or threat to a witness (use of a dangerous weapon), all as a party to the crime. The trial court sentenced him to eight years and six months of initial confinement followed by eight years and six months of extended supervision. Lanier-Cotton, by postconviction counsel, then filed a postconviction motion seeking a new trial based on ineffective assistance of counsel. Lanier-Cotton alleged that: (1) trial counsel was ineffective for failing to strike a juror (“Juror No. 8”); (2) trial counsel was ineffective for not objecting to evidence of Lanier-Cotton’s prior drug case; (3) the trial court erroneously admitted incriminating jailhouse phone calls; and (4) the trial court erroneously admitted certain testimony. The postconviction court denied the motion, Lanier-Cotton appealed, and this court upheld the postconviction court.

Lanier-Cotton then filed the WIS. STAT. § 974.06 motion underlying this appeal. Lanier-Cotton alleged: (1) ineffective assistance of trial counsel for failure to strike Juror No. 8; (2) ineffective assistance of trial counsel for failing to object to photographic evidence of the victim’s injuries; and (3) ineffective assistance of postconviction counsel for failing to fully develop the claim that trial counsel was ineffective for not striking Juror No. 8. The postconviction court denied the motion without a hearing. The postconviction court found that Lanier-Cotton’s claims were procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), and *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), because his claims either were, or could have been, previously litigated. The postconviction court also incorrectly stated that, to the extent Lanier-Cotton was arguing that

his “postconviction/appellate counsel’s performance on appeal was deficient,” he had to bring that claim through a *Knight* petition in this court.² This appeal follows.

On appeal, Lanier-Cotton withdraws his argument that postconviction counsel rendered ineffective assistance,³ but maintains that trial counsel was ineffective for failing to strike Juror No. 8 and for failing to object to the admission of photographs depicting the victim’s injuries.

“All grounds for relief available to a person under [WIS. STAT. § 974.06] must be raised in his or her original, supplemental or amended motion.” Sec. 974.06(4). A defendant seeking to raise a claim that could have been raised in a prior postconviction motion must show a “sufficient reason” for failing to raise that claim earlier, or the claim is barred. *Escalona-Naranjo*, 185 Wis. 2d at 185-86. “Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law subject to de novo review.” *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Ineffective assistance of postconviction counsel may constitute a sufficient reason for why an issue which could have been raised on direct appeal was not. *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). To demonstrate ineffective assistance of counsel in the postconviction context, a defendant must establish that

² See *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992).

³ In order to challenge postconviction counsel’s assistance, Lanier-Cotton was obligated to raise that claim in a WIS. STAT. § 974.06 motion in the circuit court, not in a *Knight* petition. See *State ex rel. Kyles v. Pollard*, 2014 WI 38, ¶27, 354 Wis. 2d 626, 847 N.W.2d 805. Lanier-Cotton did raise that claim in a § 974.06 motion; however, even if we re-incorporate that claim into this appeal, it does not provide a basis for relief. Lanier-Cotton’s ineffective assistance of trial counsel claim related to Juror No. 8 was rejected on the merits. Lanier-Cotton cannot relitigate that issue by reframing it as ineffective assistance of postconviction counsel. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

the claims he or she believes counsel should have raised were “clearly stronger” than the claims that were actually raised. *Romero-Georgana*, 360 Wis. 2d 522, ¶46.

We agree with the postconviction court that Lanier-Cotton’s arguments regarding Juror No. 8 are procedurally barred. Lanier-Cotton is simply attempting to reframe an argument that postconviction counsel previously raised twice—in his first postconviction motion and on appeal. The issue was decided and rejected on its merits. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *Witkowski*, 163 Wis. 2d at 990.

With regard to Lanier-Cotton’s claim that trial counsel was ineffective for failing to object to certain photographic evidence, we again agree that the claim is barred because Lanier-Cotton could have raised this argument on appeal, but did not do so. Lanier-Cotton’s motion briefly asserted that his postconviction counsel was ineffective for failing to raise the claim on direct appeal. However, as the postconviction court noted, Lanier-Cotton did not develop that argument or explain how this claim was clearly stronger than the ineffective assistance of counsel claims his postconviction counsel actually did raise. In his brief to this court, Lanier-Cotton attempts to elaborate on his argument; but as the State correctly points out, “that belated elaboration does not cure the inadequacy of his motion, which is all the [postconviction] court had before it.”

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals