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DISTRICT I

January 14, 2013

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

2012AP809

State of Wisconsin ex rel. Dexter Williams v. Jeff Pugh, Warden,
Stanley Correctional Institution (L.C. #2012CV1673)

Before Curley, P.J., Fine and Brennan, JJ.

Dexter Williams, *pro se*, appeals an order dismissing a petition for a writ of *habeas corpus*. 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 (2009-10).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

The record reflects that a jury convicted Williams in 2005 of possessing cocaine with intent to deliver cocaine as a party to a crime, possessing a firearm while a felon, and maintaining a drug trafficking place as a party to a crime. Williams, represented by counsel, filed an appeal under WIS. STAT. RULE 809.30 (2005-06). The only issue he raised on appeal was whether sufficient evidence supported the convictions for possessing cocaine with intent to deliver cocaine as a party to a crime and for possessing a firearm while a felon. We affirmed in a six-page decision devoted to discussing the evidence and explaining why it supported the jury's verdicts. *See State v. Williams*, No. 2005AP2783-CR, unpublished slip op. (WI App June 27, 2006).

In 2009, Williams filed a *pro se* motion for postconviction relief under WIS. STAT. § 974.06. In that proceeding, Williams alleged that he received ineffective assistance from his trial counsel. As grounds, he asserted that his trial counsel did not challenge the search warrant that led to the discovery of evidence against him and that trial counsel failed to call two witnesses in support of an alibi defense. The circuit court denied the motion. Williams appealed, and we affirmed. *State v. Williams*, No. 2009AP2262, unpublished slip op. (WI App Oct. 19, 2010). Our decision included a substantial discussion explaining the validity of the search warrant. *See id.*, ¶¶7-13.

Williams then filed the petition for a writ of *habeas corpus* that underlies this appeal. In his petition, Williams alleged that the evidence was not sufficient to convict him of either possessing cocaine with intent to deliver cocaine as a party to a crime or possessing a firearm while a felon. Williams further alleged that the search warrant was invalid. The circuit court dismissed the petition, and this appeal followed.

Habeas corpus is an extraordinary writ that affords relief only in limited circumstances.

See *State v. Pozo*, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 654 N.W.2d 12.

[I]n a postconviction setting, a petition for writ of *habeas corpus* will not be granted where (1) the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict.

Id., ¶9 (citation omitted).

Pozo governs here. Applying its principles, we conclude that the circuit court properly dismissed Williams's petition for a writ of *habeas corpus*.

In his direct appeal, Williams challenged the sufficiency of the evidence against him. He cannot revisit that issue in the instant proceeding. See *id.*

In his motion filed pursuant to WIS. STAT. § 974.06, Williams contended that the search warrant was invalid and that his trial counsel gave him ineffective assistance by failing to pursue that contention. Williams again challenges the validity of the search warrant in his petition for a writ of *habeas corpus*, alleging that the search warrant was not supported by sufficient evidence and that the magistrate who issued the warrant did so in violation of his right to due process.²

Williams cannot relitigate an issue previously litigated merely by draping it in a new legal

² Williams arguably abandoned his claim for relief grounded on the invalidity of the search warrant because he failed to address that issue with specificity in his appellate briefs. See *Adler v. D & H Indus. Inc.*, 2005 WI App 43, ¶18, 279 Wis. 2d 472, 694 N.W.2d 480 (issue deemed abandoned when not briefed or argued on appeal). As a general rule, we do not consider abandoned issues. See *id.* The rule, however, is one of administration only and does not affect our power to consider issues that are not presented in the appellate briefs. *Id.*, ¶19. For the sake of completeness, we elect to consider here whether Williams may pursue his petition for a writ of *habeas corpus* based on allegations that the search warrant was invalid.

theory. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). In this case, Williams seeks to litigate again matters that he previously litigated in earlier postconviction proceedings. He may not do so. See *Pozo*, 258 Wis. 2d 796, ¶9. Moreover, to the extent, if any, that his petition and briefs might be construed as suggesting claims that he did not previously litigate, he has offered no reason, let alone a sufficient reason, for failing to raise such claims in his earlier litigation. Therefore, any such claims are insufficient to support a petition for a writ of *habeas corpus*. See *id.*

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals