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DISTRICT II

May 1, 2013

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

2012AP1495

State of Wisconsin v. Derwin Dewayne Jones (L.C. # 2012IP1)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Derwin Jones appeals from circuit court orders denying his May and June 2012 petitions for a writ of habeas corpus.¹ Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21

¹ The circuit court deemed Jones' June 2012 reconsideration request to be an additional petition for a writ of habeas corpus. We agree with the circuit court that in June 2012, Jones filed a second petition because the first petition, filed in May 2012, was not valid because it was not verified. We construe the notice of appeal as encompassing a challenge to the circuit court's disposition of Jones' first habeas petition.

(2011-12).² We affirm because the first habeas petition was invalid and the second habeas petition was barred because Jones could have raised his claims in a prior appeal.

In 2002, we affirmed Jones' conviction for first-degree sexual assault with a dangerous weapon and child enticement for purposes of sexual contact. *State v. Jones*, No. 2001AP348-CR, unpublished slip op. (Wis. App. Jan. 9, 2002). Jones raised numerous issues on appeal, all of which we rejected. Thereafter, Jones brought numerous challenges to his conviction in state and federal courts. In none of these cases did Jones make the claim he presented in his May and June 2012 petitions for a writ of habeas corpus: the circuit court lacked jurisdiction because the criminal complaint was not signed. Jones further claimed that to the extent a signed complaint appeared in the record, the complaint had been forged by the circuit court clerk.

The circuit court denied Jones' May 2012 habeas petition because it did not comply with the verification requirements of WIS. STAT. § 782.04. Verification means signing the document in the presence of a notary public to assure this court "that the statements contained therein are presented with some regard to considerations of truthfulness, accuracy and good faith." *State ex rel. Santana v. Endicott*, 2006 WI App 13, ¶11, 288 Wis. 2d 707, 709 N.W.2d 515. "[P]etitions not properly verified do not meet the requirements for a valid application." *Id.* We affirm the circuit court's denial of Jones' first habeas petition because it was not verified.

In June 2012, Jones filed a second, verified habeas petition. The June 2012 petition raised the same claims as the first, unverified petition. The circuit court denied the verified petition on the merits. Jones appeals.

² All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

On appeal, Jones renews his arguments about the effect of the allegedly unsigned complaint. We agree with the State that habeas relief is not available where a 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.” *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12. Jones had an adequate remedy in his prior appeal and in his several prior challenges to his conviction.³ Jones has not established a valid reason for not raising his challenge to the complaint in his prior cases. Habeas relief is not available.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

³ In 2003, Jones brought a petition for a writ of habeas corpus alleging ineffective assistance of appellate counsel. He did not present his challenge to the complaint in that habeas proceeding. *State ex rel. Jones v. Swenson*, No. 2003AP3030-W. We observe that successive habeas petitions challenging counsel’s assistance are not allowed unless the petitioner offers a valid excuse for not having raised all challenges to counsel’s assistance in the first petition. *State ex rel. Schmidt v. Cooke*, 180 Wis. 2d 187, 189-90, 509 N.W.2d 96 (Ct. App. 1993).