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April 30, 2013

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

2012AP347

State v. Robert L. Jordan (L. C. #1987CF21)

Before Higginbotham, Blanchard and Kloppenburg, JJ.

This is another in a series of motions/petitions/appeals filed by Robert Jordan, pro se, arising from an attempted 1987 robbery of a grocery store in Racine. In the present case, Jordan appeals an order denying WIS. STAT. § 974.06 (2011-12)¹ postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21(1).

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Paul Preuss, a store security guard and off-duty police officer, was in pursuit of another individual involved in the attempted robbery of the grocery store when he noticed Jordan attempting to leave the store in a suspicious manner. Preuss identified himself as a police officer and told Jordan to stop so Preuss could speak with him. Jordan continued walking away and Preuss grabbed him. A struggle ensued and Jordan retrieved a small handgun from his pocket. During the struggle, Jordan twice pointed the gun at Preuss and threatened to kill him. Jordan also threatened to kill Joseph Trentadue, a store employee who was assisting Preuss in controlling Jordan.

After a jury trial, at which Jordan represented himself, Jordan was convicted of attempted robbery, carrying a concealed weapon, possession of a firearm by a felon, resisting arrest, obstructing an officer, two counts of endangering safety, and battery to a police officer. Jordan was sentenced as a habitual offender to a global indeterminate term of fifty-two years, which was later reduced to forty-six years.

We affirmed Jordan's convictions on direct appeal. *State v. Jordan*, No. 1988AP1108-CR, unpublished slip op. (WI App April 19, 1989). Jordan attempted to appeal a 1990 order denying his motion for a new trial. We dismissed the appeal because, although the circuit court denied Jordan's motion orally, there was no written order issued. We also noted Jordan's judgment of conviction was appealed and affirmed, and "it cannot be appealed directly a second time."

In May 1992, Jordan filed a WIS. STAT. § 974.06 motion for a new trial. On October 20, 2003, Jordan filed a second § 974.06 motion for a new trial. Jordan also filed various petitions

and motions in 2005, which the circuit court denied. On January 13, 2012, Jordan filed an additional postconviction motion for a new trial, which was also denied. Jordan now appeals.

Jordan raises issues related to jury instructions and the sufficiency of the evidence supporting his conviction for obstructing an officer, but he raised nearly identical issues in previous postconviction motions.² We also addressed on direct appeal Jordan's current request for a new trial in the interest of justice based on the racial make-up of the jury. We specifically determined that "Jordan failed to meet his burden of establishing a prima facie case of discrimination."

"A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Here, Jordan has at best merely rephrased matters previously litigated and lost, and therefore his claims are barred.

Jordan's current claims are also barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Due process for a convicted defendant permits him or her a single appeal for that conviction and a single opportunity to raise claims of error, and successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly alleged errors were not previously raised. *Id.* at 185.

² The circuit court also denied Jordan's 2005 "Motion for Post-Conviction Relief entitled Writ for Habeas Corpus," with respect to his challenge to the obstructing conviction, determining that *Escalona-Naranjo* barred Jordan from any further challenges on the issue. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

To the extent Jordan suggests his current arguments are newly alleged, he has provided no legitimate reason why the grounds presented were not raised in his first postconviction motion or on direct appeal. Defendants are not entitled to pursue an endless succession of postconviction motions and appeals. Jordan has had more than an ample opportunity to state his case.

Upon the foregoing,

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

Diane M. Fremgen
Clerk of Court of Appeals