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**DISTRICT IV**

October 24, 2016

To:

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

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2015AP669	State of Wisconsin v. Terry L. Schroedl (L.C. # 2000CF125)
2015AP670	State of Wisconsin v. Terry L. Schroedl (L.C. # 2000CF446)

Before Kloppenburg, P.J., Sherman and Gundrum, JJ.

Terry Schroedl appeals an order denying his motion for postconviction relief filed under WIS. STAT. § 974.06 (2013-14).<sup>1</sup> Based upon our review of the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Schroedl previously filed postconviction motions under WIS. STAT. § 974.06. In the case underlying appeal No. 2015AP669, the motion was filed in December 2002. In the case underlying appeal No. 2015AP670, the motion was filed in March 2005.<sup>2</sup>

In March 2015, Schroedl filed in both cases a “motion to correct the presentence investigation report and for resentencing based on accurate & true information.” Although the motion did not identify itself as one under WIS. STAT. § 974.06, we construe it as such because it is making a constitutional claim for relief. The circuit court denied the motion.

Schroedl first argues that because the State did not respond to his motion in circuit court, we should hold that the State has already conceded that he is entitled to the requested relief. Schroedl’s motion was filed on March 2, 2015, and the order denying it was entered on March 3, 2015. We do not see in the record any indication that the State made an affirmative statement that it was not going to respond. The lack of a response within one day after the filing of the motion cannot reasonably be viewed as a concession.

Schroedl next argues that because the circuit court did not address his motion with specificity, but instead used mainly a generic form order on which boxes were checked to indicate only (1) that no controlling legal authority was cited, (2) the factual basis was insufficient, and (3) relief was not in the public interest, Schroedl was deprived of his right to due process because the order left him not knowing what issues to argue or how to argue them.

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<sup>2</sup> In the State’s brief, its description of the prior history of these cases includes only the latter record, perhaps based on erroneous assumptions that all convictions arose from one trial, and that the prior motions, like the current one, were filed in both cases.

This argument is not persuasive as to the issue on which we decide this appeal. On its order the circuit court also checked the “other” box and wrote a note stating that the claimed relief is barred under previous rulings and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Therefore, we conclude that Schroedl was sufficiently informed of this reason for the denial of his motion.

Schroedl’s opening brief on appeal does not directly address whether the bar of WIS. STAT. § 974.06(4) applies. Under that provision, Schroedl was required to provide a sufficient reason to explain why he did not raise his current issue in his previous motions under that section. A defendant cannot prevail on a second motion under that section without doing so. *State ex rel. Dismuke v. Kolb*, 149 Wis. 2d 270, 271, 441 N.W.2d 253 (Ct. App. 1989). Schroedl has not provided an explanation in this case. Therefore, his motion was properly denied on that ground.

IT IS ORDERED that the order appealed from is summarily affirmed under WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*