

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 1, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP2948-CR

Cir. Ct. No. 2002CF3707

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DONNELLY SMITH,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Donnelly Smith, *pro se*, appeals the circuit court's order denying his motion to modify his sentence. He argues: (1) that he should have been sentenced to the maximum under the truth-in-sentencing II law, rather than the truth-in-sentencing I law, which provided for a higher maximum term; and (2) that the circuit court relied on inaccurate information in sentencing him

because it erroneously believed that he had been convicted of rape in Illinois in 1976. We affirm.

¶2 Smith previously raised the truth-in-sentencing issue, which was rejected by the circuit court on September 8, 2009. As we have often explained, “[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, 514 (Ct. App. 1991). This issue has already been raised and decided, so we will not consider it here. As for Smith’s claim that he was sentenced based on erroneous information, Smith has filed at least five motions to set aside the verdict or for a new trial, and at least four motions for sentence modification or resentencing since his 2003 conviction, all of which were denied. “[A]ny claim that could have been raised on direct appeal or in a previous Wis. Stat. § 974.06 ... postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason.” *State v. Lo*, 2003 WI 107, ¶2, 264 Wis. 2d 1, 4–5, 665 N.W.2d 756, 758 (footnote omitted); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157, 163 (1994). Smith has not provided a sufficient reason for failing to previously raise his argument that he was sentenced on the basis of erroneous information. Therefore, he is barred from raising this claim by *Escalona-Naranjo* and its progeny.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

