

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 2012

Diane M. Fremgen
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. 2011AP1896

Cir. Ct. No. 2005CF50

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEPHEN M. KLATT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Oconto County:
MICHAEL T. JUDGE, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Stephen Klatt appeals pro se an order denying his “Motion for Resentencing.” He contends the court was bound by the terms of a plea agreement Klatt reached with the district attorney. Because we conclude the motion was procedurally barred and meritless, we affirm the order.

¶2 The complaint charged Klatt with repeated sexual assault of a child and incest. Pursuant to a plea agreement, Klatt entered an *Alford*¹ plea to the sexual assault charge and the State dismissed the incest charge. The plea agreement called for the district attorney to recommend probation and no more than one year in jail, with the defense free to argue for a lesser sentence. The district attorney complied with the plea agreement. However, the court imposed a sentence of ten years' initial confinement and five years' extended supervision.

¶3 Klatt's initial appeal resulted in a no-merit report. Klatt filed a response to the report, arguing that the district attorney violated the plea agreement by failing to vigorously argue for the sentence it recommended and for failing to challenge the recommendation contained in the presentence investigation report. This court summarily affirmed Klatt's conviction and sentence, noting both that the court followed the procedures for accepting a guilty plea set out in *State v. Bangert*, 131 Wis. 2d 246, 257, 389 N.W.2d 12 (1986), and that the court specifically clarified it was not bound by the plea negotiations and could sentence Klatt to the maximum prison term.

¶4 Klatt then filed the present motion for resentencing, contending the court was bound by the prosecutor's agreement and it violated his due process rights by imposing a sentence longer than one year in jail. He equates the court with "the State" or "the government," arguing the court is a party to the plea contract.

¹ *North Carolina v. Alford*, 400 U.S. 25 (1970).

¶5 Klatt’s motion was procedurally barred because the issues raised could have been or were addressed in his no-merit appeal. *See State v. Allen*, 2010WI 89, ¶41, 328 Wis. 2d 1, 786 N.W.2d 124. In our opinion and order, we specifically noted the circuit court’s compliance with *State v. Hampton*, 2004 WI 117, ¶2, 274 Wis. 2d 379, 683 N.W.2d 14, by the trial court’s statement that it was not bound by the parties’ agreement. To the extent Klatt’s present motion differs from the issue addressed in our opinion and order, Klatt does not allege, much less establish, sufficient reason for his failure to raise this issue in the no-merit proceeding.

¶6 Klatt contends the procedural bar does not apply because his motion was not made under WIS. STAT. § 974.06,² but was instead a “Petition to Enforce Specific Performance.” No such action is recognized in Wisconsin law. Regardless of the label he attached to the motion, it was necessarily a motion under § 974.06 because it sought resentencing based on Klatt’s due process rights and it was filed after his direct appeal rights were exhausted.

¶7 Klatt’s argument also fails on the merits. Trial courts in this state are not allowed to participate in plea bargains. *Young v. State*, 49 Wis. 2d 361, 367, 182 N.W.2d 262 (1971). A judge is not bound by and could not be controlled by any understanding had by the prosecutor and the defendant. *Id.*

By the Court.—Order affirmed.

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

² All references to the Wisconsin Statutes are to the 2009-10 version.

