OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 8, 2024

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Nicholas DeSantis
Electronic Notice

Robbie L. Fields 435399
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2023AP1017 State of Wisconsin v. Robbie L. Fields (L.C. # 2015CF1126)

Before White, C.J., Geenen and Colón, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Robbie L. Fields, *pro se*, appeals an order denying his motion seeking postconviction relief under WIS. STAT. § 974.06 (2021-22).[1] The circuit court determined that his claims were barred. Upon consideration of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

In December 2015, a jury found Fields guilty of first-degree reckless homicide. He appealed from the judgment of conviction pursuant to the no-merit procedures set forth in WIS.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

STAT. RULE 809.32 and ***Anders v. California***, 386 U.S. 738 (1967). His appellate counsel filed a no-merit report and a supplemental no-merit report, and Fields filed three responses. We determined that the case did not present any arguably meritorious issues for an appeal, and we summarily affirmed the judgment of conviction. ***State v. Fields*** (***Fields I***), No. 2018AP1800-CRNM, unpublished op. and order (WI App Jan. 6, 2021). Fields moved for reconsideration, which we denied. Our supreme court denied his petition for review.

Fields, proceeding *pro se*, next moved the circuit court for sentence modification on the ground that new factors warranted a more lenient sentence than the forty-year term of imprisonment imposed. The circuit court denied the motion, concluding that Fields did not identify any new factors but instead sought to raise claims based on facts that were in existence at the time of his sentencing.

On April 28, 2023, Fields filed the postconviction motion underlying this appeal. He alleged that he was entitled to relief because a police officer had "fabricated" and "withheld" evidence. He asserted that he had raised those claims in ***Fields I***, but that they had not been addressed. Fields also alleged that he was entitled to relief because the State had relied on "false testimony to b[i]nd [him] over for trial," and he asserted that he had not previously raised this claim. The circuit court concluded that all of his claims were procedurally barred. He appeals.

Fields acknowledges that he raised some of his current claims in prior litigation. "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). The rule is no less applicable when the prior litigation was a no-merit appeal. To the contrary, "the no merit process 'necessarily implicates the merits of an

appeal,'" and an opinion resolving such an appeal "'can only be understood as a merits-based decision with respect to each of the claims raised in the petition[.]"' ***State v. Tillman***, 2005 WI App 71, ¶18, 281 Wis. 2d 157, 696 N.W.2d 574 (citation omitted). However, before applying a procedural bar to a postconviction motion filed after a no-merit appeal, we must consider whether the no-merit procedures were followed and whether they warrant sufficient confidence to permit application of the bar. ***State v. Allen***, 2010 WI 89, ¶62, 328 Wis. 2d 1, 786 N.W.2d 124.

Accordingly, we have examined the proceedings in ***Fields I***. Our examination reveals that the submissions from Fields and his appellate counsel were extensive: appellate counsel and Fields each submitted dozens of pages of argument, and Fields additionally submitted numerous attachments in his several appendices. Our ten-page opinion resolving the appeal reflects that we considered the lengthy submissions and that we independently reviewed the record. We explained that, upon review, we concluded that appellate counsel's no-merit reports properly analyzed the potential issues and that the potential issues lacked arguable merit. We identified certain issues warranting additional discussion, ***id.*** at 3, and we addressed them in detail. We listed numerous issues that we had also considered and rejected, and we then noted: "[t]o the extent that we have not listed an issue discussed in either the no-merit reports or Fields' responses, that issue has been rejected due to lack of arguable merit based on counsel's no-merit reports, the record and Fields' responses." ***Id.*** at 3 & n.3. Ultimately, we concluded that "there would be no arguable merit to any issue that could be raised on appeal." ***Id.*** at 5.

The proceedings in ***Fields I*** clearly demonstrate compliance with the no-merit procedures, *see* ***Tillman***, 281 Wis. 2d 157, ¶17, and warrant confidence in the outcome of the

appeal. Accordingly, Fields may not relitigate the claims that we resolved in ***Fields I***. *See* ***Witkowski***, 163 Wis. 2d at 990.

Upon application of ***Witkowski*** to the instant proceedings, we conclude that all of Fields' current claims are barred. Fields concedes that in ***Fields I*** he raised two of the issues that he presents now, but he alleges that those issues "were not addressed." He is wrong. This court is not required to discuss individually each allegation that is put forward in a no-merit proceeding. ***Allen***, 328 Wis. 2d 1, ¶82. As our supreme court explained, when we state that we considered possible issues presented in a no-merit appeal, courts and litigants may rely on our statements. ***Id.*** Here, our decision in ***Fields I*** reflects that we considered but rejected as frivolous the claims that Fields raised in that proceeding, regardless of his contention now that some issues "were not addressed." Accordingly, Fields may not raise those issues again.

Similarly, our decision in ***Fields I*** resolved Fields' current claim that the State presented "false testimony" at the preliminary hearing. Although Fields asserts that he did not personally raise the claim, the proceedings reflect that appellate counsel raised it on his behalf. Specifically, appellate counsel's supplemental no-merit report examined whether Fields could pursue any arguably meritorious claim based on the preliminary hearing, and appellate counsel explained that Fields could not do so in light of ***State v. Webb***, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991) (providing that no remedy exists after trial for alleged error at a preliminary hearing). Our opinion resolving ***Fields I*** expressly stated that we had considered the analyses that appellate counsel provided, and that we rejected as meritless all of the issues suggested in all of the submissions. ***Id.***, No. 2018AP1800-CRNM, at 3 n.3. Our decision bars Fields from again seeking relief based on those issues, including alleged errors at the preliminary hearing.

Therefore,

IT IS ORDERED that the postconviction order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals