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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  
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**DISTRICT II**

January 20, 2016

To:

Hon. Faye M. Flancher  
Circuit Court Judge  
Racine County Courthouse  
730 Wisconsin Avenue  
Racine, WI 53403

Samuel A. Christensen  
Clerk of Circuit Court  
Racine County Courthouse  
730 Wisconsin Avenue  
Racine, WI 53403

W. Richard Chiapete  
District Attorney  
730 Wisconsin Avenue  
Racine, WI 53403

Jacob J. Wittwer  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

William J. Varellas, #05724-040  
P.O. Box 33  
Terre Haute, IN 47808

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

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2015AP485

State of Wisconsin v. William J. Varellas (L.C. # 1989CF1041)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

William Varellas appeals *pro se* from a circuit court order denying his WIS. STAT. § 974.06 (2013-14)<sup>1</sup> motion seeking resentencing because his consecutive state and federal sentences constitute a double jeopardy violation. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We agree with the circuit court that Varellas's motion was barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

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

The relevant procedural history is set out in our 1994 opinion affirming Varellas’s conviction, and we need not repeat that history here. *State v. Varellas (Varellas I)*, No. 1992AP2215-CR, unpublished slip op. (WI App Jan. 26, 1994). In *Varellas I*, Varellas argued *inter alia* that his Wisconsin conviction for first-degree intentional homicide as party to the crime violated “state and federal constitutional protections against double jeopardy because he was previously convicted of federal offenses growing out of the homicide incident and the federal prosecution [for conspiracy to kidnap and related offenses] relied on the same evidence relied upon by the State” in the intentional homicide prosecution. *Id.*, unpublished slip op. at 1. We reached the merits of this claim and held that the elements of first-degree intentional homicide were not congruent with the federal offense of conspiracy to kidnap. *Id.*, unpublished slip op. at 3. Therefore, we rejected Varellas’s double jeopardy claim.

In 2014, Varellas filed a *pro se* WIS. STAT. § 974.06 motion in which he argued that serving his intentional homicide sentence consecutively to his federal sentence violated double jeopardy protections. The circuit court denied the motion without a hearing because Varellas had a prior direct appeal and did not offer a sufficient reason for failing to raise this issue in that appeal. *See Escalona*, 185 Wis. 2d at 185. The circuit court further concluded that the § 974.06 motion lacked merit because the federal and state convictions were not the same offense. Varellas appeals.

We agree with the circuit court that Varellas’s WIS. STAT. § 974.06 motion was barred under *Escalona*. The motion makes an argument premised on double jeopardy protections, an argument we rejected in *Varellas I*. Any ground raised and adjudicated in a prior proceeding may not be litigated in a subsequent motion. *Escalona*, 185 Wis. 2d at 181-82; *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated

may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”). Varellas’s § 974.06 motion merely offers another take on the double jeopardy argument we rejected in *Varellas I*.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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