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**DISTRICT IV**

March 31, 2016

To:

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La Crosse County Courthouse  
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You are hereby notified that the Court has entered the following opinion and order:

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2015AP337

State of Wisconsin v. Jerry A. McMahon (L.C. # 1997CF41)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Jerry McMahon appeals a circuit court order that denied his latest motion for postconviction relief from a criminal judgment of conviction entered in 1997. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm for the reasons discussed below.

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

McMahon's current motion alleges that he was sentenced based upon inaccurate information because a police report and F.B.I. identification record indicate that he was "charged" with one count of first-degree sexual assault, whereas his attorney told him and the sentencing court stated that he was charged with two counts. Although we fully agree with the circuit court's explanation of how McMahon was confusing the grounds for his arrest with the two charges in the original complaint, we will not address the merits of McMahon's claim because we conclude that it is procedurally barred.

Under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), claims that could have been raised on a prior direct appeal or postconviction motion from a criminal judgment of conviction cannot be the basis for a subsequent WIS. STAT. § 974.06 motion unless the court finds there was sufficient reason for failing to raise the claim in the earlier proceeding. McMahon asserts in his reply brief that the reason he did not raise his current issue sooner was that he had a golf ball sized tumor removed from his head in 2000, and that he is currently awaiting surgery to deal with an aneurysm in his brain.

While McMahon's tumor might excuse his failure to raise the issue on his direct no-merit appeal or in a number of sentence modification motions he filed prior to 2000, McMahon also filed two prior postconviction motions under WIS. STAT. § 974.06 after the removal of the tumor—one in 2002 and one in 2009. We see nothing in those motions to suggest that McMahon was incompetent at the time they were filed, and McMahon's subsequent aneurysm has no bearing on his earlier failures. We therefore conclude that the issue raised in McMahon's current motion—which is based upon information that has long been available to him—is procedurally barred.

IT IS ORDERED that the circuit court order denying McMahon's postconviction motion for relief based upon allegedly inaccurate sentencing information is summarily affirmed under WIS. STAT. RULE 809.21(1).

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