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**DISTRICT I**

July 27, 2016

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

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2015AP414

State v. Jonathan Gils  
(L.C. #1995CF954770)

Before Kessler, Brennan and Brash, JJ.

Jonathan Gils, *pro se*, appeals the circuit court's order denying his three motions for postconviction relief. The circuit court concluded that Gils's claims were procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), after finding Gils "could easily have raised the current claims in his prior postconviction motion filed in 1999." Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2013-14).<sup>1</sup> We affirm.

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

## BACKGROUND

This court has previously summarized the relevant facts and procedural history of Gils's case. For purposes of this appeal, it suffices to state that in 1996, a jury found Gils guilty of the following crimes: count one, armed robbery; count two, aggravated battery; count three, armed robbery; and count four, substantial battery, all as party to the crime.

Gils subsequently filed a WIS. STAT. Rule 809.30 postconviction motion, which the circuit court denied. He appealed and we affirmed. *See State v. Gils*, No. 1996AP3543, unpublished slip op. (WI App Jan. 20, 1998). The Wisconsin Supreme Court denied Gils's petition for review.

In 1999, Gils, *pro se*, filed a motion for postconviction relief under WIS. STAT. § 974.06. The circuit court denied the motion, Gils appealed, and we affirmed. *See State v. Gils*, No. 2000AP180, unpublished slip op. (WI App Apr. 24, 2001). The Wisconsin Supreme Court denied Gils's petition for review.

In 2010, Gils, *pro se*, filed a motion for sentence modification. Upon review, the circuit court determined that Gils's motion was not one for sentence modification but rather, it was a motion seeking resentencing. The circuit court denied the motion both on its merits and on the basis that it was barred by *Escalona*. The circuit court also denied Gils's motion for reconsideration.

In 2015, Gils, *pro se*, filed the three postconviction motions underlying this appeal. In the first motion, Gils asked the circuit court to exercise its "inherent authority" to set aside his judgment of conviction on count one on grounds that it was procured by fraud and to then allow

him to plead guilty to that count. In the second motion, Gils moved the circuit court to incorporate two letters from the assistant district attorney into the record. Gils asserted that the letters supported his motion for the circuit court to exercise its inherent authority. In the third motion, Gils moved the court to hold a fact-finding hearing on his motion to set aside his judgment of conviction on count one.

The circuit court denied the three interrelated motions as procedurally barred under *Escalona*. This appeal follows.

### DISCUSSION

The postconviction procedures of WIS. STAT. § 974.06 allow a defendant to attack his conviction after the time for appeal has expired. *See Escalona*, 185 Wis. 2d at 176. There is, however, a limitation: an issue that could have been raised on direct appeal or by prior motion is barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the issue earlier. *See State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Allowing “[s]uccessive motions and appeals, which all could have been brought at the same time” is prohibited by WIS. STAT. § 974.06 and *Escalona*, which reinforces that “[w]e need finality in our litigation.” *Escalona*, 185 Wis. 2d at 185.

Gils argues on appeal that *Escalona* does not bar his postconviction motions because they were not WIS. STAT. § 974.06 motions; instead, he casts his filings as “common law motion[s]” and argues that he sought relief under the circuit court’s broad inherent authority. We are not persuaded by Gils’s attempt to circumvent § 974.06 under the guise of invoking the circuit court’s inherent authority.

Gils’s postconviction claims have a “constitutional dimension” and as such, they could have been raised in his prior WIS. STAT. § 974.06 motion. *See State v. Miller*, 2009 WI App 111, ¶26, 320 Wis. 2d 724, 772 N.W.2d 188. Gils alleges the State committed fraud by intentionally failing to disclose “material” facts to the circuit court. This amounts to an alleged due process violation. *See generally Giglio v. United States*, 405 U.S. 150, 155-55 (1972) (reversing a conviction after concluding the State violated due process when it did not disclose that a key witness was promised immunity in exchange for his testimony). Additionally, Gils argues the State’s fraud invalidated the amended information. Gils’s theory was that the amended information neglected to state that a stolen handgun would partly serve as a factual basis for count one. This also amounts to an alleged due process violation. *See, e.g., State v. Flakes*, 140 Wis. 2d 411, 420-23, 410 N.W.2d 614 (Ct. App. 1987) (rejecting a due process challenge to an amended information because the defendant had actual notice of the charge).

Gils does not explain why he failed to make these claims at trial, in his prior appeal, or in his prior WIS. STAT. § 974.06 motion. Instead, he asserts that his current claims do not seek relief under § 974.06.<sup>2</sup> We are not convinced. Consequently, we conclude Gils’s current claims

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<sup>2</sup> To the extent Gils argued in one of the underlying postconviction motions that he had a sufficient reason for not raising his current claims in a prior motion—namely, that he is *pro se*, indigent, and lacked the knowledge to pursue his claims earlier—his argument fails. Although we grant *pro se* criminal defendants considerable latitude, every person is presumed to know the law and cannot claim ignorance as a defense. *See Waushara Cty. v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (*pro se* litigants are required to abide by the same procedural rules).

are barred because he has not provided a sufficient reason for failing to raise them in his prior postconviction motion.<sup>3</sup>

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

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<sup>3</sup> While this case was pending, Gils filed a motion to strike several inadvertently inaccurate dates contained in his brief-in-chief. We have reviewed the motion and conclude that striking the inaccuracies is unnecessary, and we therefore deny it. We also note that Gils has not been penalized for the erroneous dates.