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**DISTRICT I/IV**

September 27, 2016

To:

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

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2016AP229

State of Wisconsin v. Sam Gwin, Jr. (L.C. # 2005CF2230)

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

Sam Gwin, pro se, appeals an order denying his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2013-14).<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Gwin was convicted, after a jury trial, of first-degree intentional homicide and possession of a firearm by a felon. Gwin appealed, challenging the sufficiency of the evidence. *See State v.*

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

*Gwin*, No. 2013AP968-CR, unpublished slip op. (WI App July 22, 2014). We affirmed the conviction. *Id.* Gwin then filed a petition for writ of habeas corpus in this court, arguing that his appellate counsel was ineffective for failing to investigate and failing to present certain information to this court. We denied the writ petition in an opinion and order dated September 9, 2015, discussing each piece of information that Gwin believed his attorney should have presented. Gwin then filed a postconviction motion pursuant to WIS. STAT. § 974.06, again arguing that his appellate attorney failed to investigate and present certain information. The circuit court denied the motion, and Gwin now appeals.

The State argues in its respondent's brief that the circuit court correctly denied the motion without a hearing because Gwin's claims are barred under *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."). The State asserts that Gwin's most recent postconviction motion simply reiterates or rephrases the same allegations he made in the habeas proceeding regarding ineffective assistance of counsel. Gwin has failed to file a reply brief. We consider this a concession that he has failed to raise any claim that was not previously litigated. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (a proposition asserted by a respondent on appeal and not disputed by the appellant's reply is taken as admitted). Accordingly, we conclude that Gwin's claims are barred under *Witkowski*, 163 Wis. 2d at 990.

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

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