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110 EAST MAIN STREET, SUITE 215  
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MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT IV**

February 9, 2017

To:

Hon. Josann M. Reynolds  
Circuit Court Judge  
215 South Hamilton  
Madison, WI 53703

Shelly J. Rusch  
Assistant District Attorney  
215 S. Hamilton St., Room 3000  
Madison, WI 53703-3297

Carlo Esqueda  
Clerk of Circuit Court  
Room 1000  
215 South Hamilton  
Madison, WI 53703

Rodney C. Moore 284927  
Green Bay Corr. Inst.  
P.O. Box 19033  
Green Bay, WI 54307-9033

Robert Probst  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

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2015AP2364

State of Wisconsin v. Rodney C. Moore (L.C. # 2005CF1306)

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

Rodney Moore, pro se, appeals an order denying his most recent motion for postconviction relief and directing that the circuit court clerk file any further pleadings in Dane County Circuit Court Case No. 2005CF1306 without judicial consideration. 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 (2015-16).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Moore has a long history of litigation in this case. He was convicted in 2006, after a jury trial, of second-degree sexual assault of a child. On direct appeal, his counsel filed a no-merit report, and Moore submitted a response. After reviewing the materials submitted and conducting our own independent review of the record, we affirmed Moore's judgment of conviction. Moore has attempted on multiple occasions to initiate additional direct appeals, which we dismissed on the basis that he is not entitled to more than one direct appeal. He has filed numerous postconviction motions in the circuit court. The record contains more than ten orders in which the circuit court denied his motions on grounds that all of his arguments were procedurally barred. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994) (claims that could have been raised on direct appeal or in a previous postconviction motion under WIS. STAT. § 974.06 are barred from being raised in a subsequent § 974.06 motion absent a showing of a sufficient reason for not doing so). Moore also filed two *Knight*<sup>2</sup> petitions in this court, which we denied. In addition, he filed more than half a dozen writ petitions mounting collateral challenges to his conviction, all of which we also denied.

In this appeal, the State responds that all of Moore's arguments are procedurally barred. We agree. Moore asserts that his conviction is invalid because of a host of issues related to his mental health history, because the judge improperly admitted evidence related to his prior conviction, and because certain witnesses gave false or incomplete testimony or had conflicts of interest. All of these arguments were considered and rejected in the opinion we issued in Moore's no-merit appeal. We also previously rejected, in an order dated February 6, 2014, an argument by Moore that a circuit court order directing the clerk to file further pleadings without

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<sup>2</sup> *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992).

judicial consideration unlawfully deprived him of his appellate rights. Moore again revisits that argument in the current appeal. We will not decide any of these issues again. *See 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.”).

Moore’s arguments are difficult to follow because they bleed into one another and lack citations to facts in the record. However, to the extent that any of the arguments he raises now were not raised previously, we agree with the State that Moore has not provided a sufficient reason for failing to do so. *See State v. Tillman*, 2005 WI App 71, ¶27, 281 Wis. 2d 157, 696 N.W.2d 574 (extending the applicability of the procedural bar of *Escalona* to postconviction motions following no-merit appeals). Accordingly, we affirm the circuit court on the basis that all of Moore’s arguments are procedurally barred.

The State requests in its respondent’s brief that this court enter an order barring Moore from filing original appellate actions or appeals in this court with respect to Dane County Circuit Court Case No. 2005CF1306 without first undertaking certain prerequisite steps, as this court ordered in *State v. Casteel*, 2001 WI App 188, ¶¶25-26, 247 Wis. 2d 451, 634 N.W.2d 338 (petition for review denied). The State argues that a *Casteel*-type order is necessary to protect the court system from continued waste of time and resources caused by Moore’s appeals.

We agree that Moore has engaged in a pattern of abusive, repetitive litigation. One method of limiting the access of an abusive litigant to the court is to require the litigant to obtain prior approval for any future filings, on a case-by-case basis, so as to prevent additional frivolous suits. This method has the virtue of allowing a litigant continuing access to the courts for any meritorious claims that may arise, while still comporting with the general disapproval of blanket

orders, and is the approach we took in *Casteel. Id.* We conclude that a *Casteel*-type order is warranted here.

Accordingly,

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that Moore's motion for permission to file "brief of oral argument" is denied.

IT IS FURTHER ORDERED that, due to Moore's abusive, repetitive litigation of essentially the same issues relating to Dane County Case No. 2005CF1306, henceforth Moore shall be required to submit an affidavit to this court every time he attempts to initiate a new appeal or writ proceeding relating to that case. The following requirements apply:

(1) In the case of an appeal, an affidavit shall be submitted to this court along with the copy of the notice of appeal that must be submitted by Moore to the clerk of this court pursuant to WIS. STAT. RULE 809.10(1)(c).

(2) In the case of a writ proceeding, an affidavit shall be filed prior to the filing of any writ petition in this court.

(3) The affidavit, sworn to by Moore, shall include a statement setting forth:

- the specific grounds upon which this court could grant relief;
- a statement showing how the issues sought to be raised differ from issues he has previously raised; and
- a statement explaining why any new claims could not have been previously raised.

(4) The affidavit shall not exceed 1,000 words.

(5) The affidavit shall include, as an attachment, a copy of the decision or order from which Moore is seeking relief. The text of the attached decision or order shall not apply to the word limit of the affidavit.

We will not consider any materials submitted by Moore in excess of the materials described above. That is, we will consider only the affidavit and a copy of the decision or order from which Moore is seeking relief.

If the affidavit fails to demonstrate that Moore is pursuing an argument or claim upon which relief could be granted that is not procedurally barred, or otherwise fails to conform to the above-stated requirements, we will refuse to docket the appeal or writ proceeding.

The respondent need not submit anything in response to Moore's affidavit. The respondent may wait to submit any filings to this court until after we issue an order, if any, permitting Moore's appeal or writ proceeding to be docketed.

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