



OFFICE OF THE CLERK  
**WISCONSIN COURT OF APPEALS**

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  
Web Site: [www.wicourts.gov](http://www.wicourts.gov)

**DISTRICT II**

January 17, 2018

To:

Hon. Kent R. Hoffmann  
Circuit Court Judge  
Sheboygan County Courthouse  
615 N. 6th St.  
Sheboygan, WI 53081

Melody Lorge  
Clerk of Circuit Court  
Sheboygan County Courthouse  
615 N. 6th Street  
Sheboygan, WI 53081

Joel Urmanski  
District Attorney  
615 N. 6th St.  
Sheboygan, WI 53081

Tiffany M. Winter  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Macaulay T. Krueger, #570850  
Redgranite Corr. Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

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

---

2017AP351	State of Wisconsin v. Macaulay T. Krueger (L.C. # 2010CF307)
2017AP352	State of Wisconsin v. Macaulay T. Krueger (L.C. # 2010CF358)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

In these consolidated appeals, Macaulay T. Krueger appeals pro se from orders denying his motions for postconviction relief. 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 (2015-16).<sup>1</sup> Because Krueger’s postconviction claims either were or could have been litigated in prior postconviction motions or appeals, they are procedurally barred and we affirm.

Krueger was convicted of three counts of causing a child under thirteen to view or listen to a sex act. After discharging appointed counsel, he filed numerous pro se postconviction motions and pursued a WIS. STAT. RULE 809.30 direct appeal arguing that there was insufficient evidence to support his convictions, that the State violated his right to be free from double jeopardy, and that the circuit court erred in denying his postconviction motions alleging the ineffective assistance of counsel. We rejected his challenges and affirmed the judgments and order. *State v. Krueger*, Nos. 2012AP51/52-CR, unpublished slip op. (WI App Mar. 13, 2013). The Wisconsin Supreme Court denied Krueger’s petition for review.

In it undisputed that Krueger continued to file postconviction motions in the circuit court and commenced at least two appeals, one of which he voluntarily dismissed.<sup>2</sup> As relevant to this appeal, Krueger filed three motions: (1) a “Motion of and to show ACTUAL INNOCENCE” asserting that a victim’s school records would establish Krueger’s innocence because it would prove that Krueger showed the victim how to use a condom and how to masturbate for educational purposes; (2) a “Motion for Declaratory judgment” requesting that the circuit court enter a declaration on Krueger’s judgment that he was effectively separated from his wife; and

---

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

<sup>2</sup> The other appeal sought to correct Krueger’s written judgments of conviction. Because the written judgment did not conform to the sentencing court’s oral pronouncement, we reversed with directions to correct the written judgments by removing its reference to the imposition of a DNA surcharge. *State v. Krueger*, No. 2014AP2662, unpublished slip op. and order (WI App Feb. 17, 2016). Thereafter, Krueger continued to file postconviction motions in the circuit court.

(3) a document entitled “Briefs on Post-conviction motion” which contained motions “to correct erroneous rulings based on incorrect case law,” and to “Vacate and Dismiss” some or all convictions on grounds of actual innocence and double jeopardy.

Observing that Krueger had a direct appeal and that his subsequent postconviction motions were denied, the circuit court determined Krueger’s motions were procedurally barred and denied them without a hearing, stating: “The defendant has failed to present a sufficient reason for failing to raise these issues earlier. In fact, the defendant is trying to re-address issues which have been previously denied.” Krueger appeals.

We conclude Krueger’s claims are procedurally barred by WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly-alleged claims were not previously raised. *Id.* at 184-85. The requirement that a defendant raise all errors in the first postconviction motion serves the goals of finality in criminal litigation and conservation of judicial resources. *State v. Lo*, 2003 WI 107, ¶¶44-46, 264 Wis. 2d 1, 665 N.W.2d 756. Whether a successive postconviction claim is procedurally barred is a question of law that we review independently. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). Here, Krueger’s motion offered no reason, much less a sufficient reason, for failing to properly raise his claims on direct appeal or in earlier motions. To the extent he may be attempting to reframe issues raised in previous motions or appeals, including the claimed double jeopardy violation, those repackaged issues cannot be relitigated in a subsequent motion no matter how artfully they are rephrased. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Krueger claims that *Escalona*'s procedural bar does not apply because the instant motions were not filed under WIS. STAT. § 974.06. We are not persuaded. A court looks to the facts pled in a pro se filing and not simply to its label to determine if relief is warranted. *Bin-Rilla v. Israel*, 113 Wis. 2d 514, 521-24, 335 N.W.2d 384 (1983). Here, Krueger's claims relate to his original convictions and no matter how Krueger's motions are construed, they are procedurally barred as successive or previously litigated. Krueger cannot circumvent the procedural bar by selectively labeling his post-direct-appeal postconviction motions.

Citing *State v. Crockett*, 2001 WI App 235, 248 Wis. 2d 120, 635 N.W.2d 673, Krueger urges this court to refrain from applying *Escalona*'s procedural bar and to instead address the merits of his claims. In *Crockett*, we rejected the defendant's argument that we could not or should not apply *Escalona*'s procedural bar where the State failed to make that argument in the circuit court. *Crockett*, 248 Wis. 2d 120, ¶¶8-9. *Crockett* does not work in Krueger's favor, where the circuit court's decision was grounded in the procedural bar, and given that Krueger has litigated multiple postconviction motions and/or appeals.

Upon the foregoing reasons,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

---

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