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

DISTRICT IV

February 26, 2018

To:

Hon. Ramona A. Gonzalez
Circuit Court Judge
LaCrosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Rm. 1200
La Crosse, WI 54601

Tim Gruenke
District Attorney
333 Vine Street, Rm. 1100
La Crosse, WI 54601

Lisa E.F. Kumfer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Lewis Altman Jr. 269163
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2017AP480-CR State of Wisconsin v. Lewis Altman, Jr. (L.C. # 1993CF1256)

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

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).

Lewis Altman, Jr., pro se, appeals a circuit court order denying his postconviction motion to vacate its restitution order. Altman argues that recent amendments to statutory provisions affecting restitution give him new grounds for challenging the amount of restitution. 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).[1] The arguments that Altman makes in his appeal lack merit. We therefore affirm the circuit court's order.

In 1993, Altman pleaded guilty to one count of first-degree intentional homicide and three counts of first-degree recklessly endangering safety. Altman was sentenced to a total of forty years in prison and ordered to pay $18,000 in restitution. Altman subsequently filed several postconviction motions, including a motion seeking plea withdrawal based on ineffective assistance of counsel and a motion to vacate the restitution order. The circuit court denied his motion after a hearing, but amended the restitution order to $5,000. Since that time, Altman has sought further review of his conviction through numerous motions, petitions, and appeals that we need not recount here.

Altman's current appeal involves a postconviction motion under WIS. STAT. § 974.06 in which Altman argued that the circuit court erroneously exercised its discretion when it amended his restitution order to $5,000. He also argued that he was denied effective assistance of counsel because his attorney did not request a restitution hearing and instead stipulated to the $5,000 amount. The circuit court denied Altman's motion as procedurally barred. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994) (a claim for relief that could have been made on direct appeal or in an earlier postconviction motion is procedurally barred unless there is a sufficient reason for not raising it previously). The application of the procedural bar under ***Escalona-Naranjo*** is a question of law that we review de novo. *See* ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

In his appeal to this court, Altman argues that the procedural bar does not apply because WIS. STAT. § 71.935(2) gives him a new right to appeal his restitution order. There are two problems with Altman's argument. The first problem is that Altman did not mention this statutory provision in the motion he filed in the circuit court. We typically do not address issues raised for the first time on appeal. *See* ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) ("[Appellate courts] will not ... blindside trial courts with reversals based on theories which did not originate in their forum.").

The second problem is that Altman does not demonstrate that WIS. STAT. § 71.935(2) has any application to him. This statutory provision, which was amended in 2015 and became effective in 2016, sets forth a procedure by which a municipality may seek to collect debt through an offset of a taxpayer's tax refund. The provision cited by Altman states,

> A municipality or county may certify to the department any debt owed to it. Not later than 5 days after certification under this section or under s. 973.20(10)(b), the municipality or county shall notify the debtor in writing of its certification of the debt to the department, of the basis of the certification and of the debtor's right to appeal and, in the case of parking citations, of the debtor's right to contest the citation. At the time of certification, the municipality or county shall furnish to the department the name and social security number or operator's license number of each individual debtor and the name and federal employer identification number of each other debtor.

Sec. 71.935(2). However, we see no indication in the record that any municipality or county has certified a debt owed by Altman to the Department of Revenue. The State argues that such a certification is unlikely, given the fact that Altman remains incarcerated and presumably does not file income tax returns.

In his reply brief, Altman does not argue that WIS. STAT. § 71.935 applies to him. Instead, he argues that he intended to invoke rights under other provisions affecting restitution

that were amended at the same time as § 71.935. "It is a well-established rule that we do not consider arguments raised for the first time in a reply brief." ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661.

Altman contends that we should make an exception in this case because he is a pro se litigant. However, "[o]ur obligation to liberally construe a pro se litigant's pleading assumes that the litigant has otherwise made a proper argument for relief." ***State ex rel. Harris v. Smith***, 220 Wis. 2d 158, 164, 582 N.W.2d 131 (Ct. App. 1998). Here, even if we were to consider Altman's newly raised arguments on the merits, Altman has not convinced us that the recent statutory changes affecting the payment of restitution are a sufficient reason to allow him to raise a new challenge to the restitution order. To the contrary, Altman's reply brief relies on our decision in ***State v. Pope***, 107 Wis. 2d 726, 733, 321 N.W.2d 359 (Ct. App. 1982) ("In determining the amount of restitution, a court must consider the probationer's financial resources and future ability to pay, and cannot establish an amount of restitution so high as to demonstrate a disregard of this obligation."). Our decision in ***Pope*** was available to Altman at the time of his conviction, and we see no developed argument from Altman for why he could not have relied on it in an earlier postconviction motion. Our obligation to a pro se appellant "does not extend to … making an argument for the litigant." ***Smith***, 220 Wis. 2d at 165.

We see no other developed arguments from Altman. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988) (we need not consider arguments that are unexplained or undeveloped). We therefore conclude that the circuit court correctly determined that Altman's motion was procedurally barred under ***Escalona-Naranjo***, 185 Wis. 2d at 185. Accordingly, we affirm the circuit court's order denying Altman's motion to vacate his restitution order.

Upon the foregoing reasons,

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

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

Sheila T. Reiff
Clerk of Court of Appeals