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**DISTRICT II**

May 23, 2018

To:

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

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2017AP946-CR

State of Wisconsin v. Gregory Franklin Atwater  
(L.C. # 2001CF180)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, 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).**

Gregory Franklin Atwater appeals from an order of the circuit court denying his latest postconviction motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21 (2015-16).<sup>1</sup> We affirm.

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

Atwater was convicted of robbery in 2002 and sentenced to seven years' initial confinement followed by eight years' extended supervision. Restitution was to be determined at a future date. In 2004, the judgment of conviction was modified, imposing \$4900 in restitution. Following the amended judgment of conviction, Atwater filed multiple motions, including a motion under WIS. STAT. § 974.06 in 2008 and another postconviction motion in 2009. None of these motions challenged the imposition of restitution. In April 2017, Atwater filed the § 974.06 motion at issue here, asking the circuit court to vacate the order for restitution.<sup>2</sup> The circuit court denied this motion, finding that it was barred by the equitable doctrine of laches.

On appeal, Atwater (pro se) raises several claims related to the restitution order. However, the State points out that Atwater filed previous postconviction motions where he could have raised these issues and did not, and therefore, his claims are procedurally barred.<sup>3</sup> We agree with the State.

“[C]laims of error that could have been raised on direct appeal or in a previous [WIS. STAT.] § 974.06 motion are barred from being raised in a subsequent § 974.06 motion, absent a showing of a sufficient reason.” *State v. Lo.*, 2003 WI 107, ¶15, 264 Wis. 2d 1, 665 N.W.2d 756; *see also State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Atwater's only stated reason for not raising his restitution arguments in the previous

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<sup>2</sup> Although Atwater styled his motion as one under WIS. STAT. § 973.20 (the restitution statute), he asks us to construe his motion as a motion under WIS. STAT. § 974.06. We accept this characterization.

<sup>3</sup> Atwater asks us to disregard this argument because the State raises procedural bar for the first time on appeal. However, it is well established that respondents may offer new arguments to affirm the result in the circuit court. *See Blum v. 1st Auto & Cas. Ins. Co.*, 2010 WI 78, ¶27 n.4, 326 Wis. 2d 729, 786 N.W.2d 78.

postconviction motions is that the motions were for “specified issues” and he was not aware “that he could have or should have . . . raised the restitution claims in these prior postconviction motions.”<sup>4</sup> This is not a sufficient reason; Atwater’s claims are barred.

Upon the foregoing reasons,

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>4</sup> Atwater also alleges that in 2004 the circuit court informed him that he could only dispute the restitution order once he was released from prison in 2014. However, he does not support this assertion with any citation to the record, so we will not address it further. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address undeveloped arguments).