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**DISTRICT IV**

July 17, 2019

To:

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

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2018AP720

State of Wisconsin v. Terrance J. Shaw (L.C. # 1982CF266)

Before Blanchard, 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).**

Terrance Shaw, pro se, appeals the circuit court's order denying Shaw's motion to reconsider the court's decision that denied Shaw's postconviction motion. We directed the parties to address in their appellate briefs whether we have jurisdiction to review the order. 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(1) (2017-18).<sup>1</sup> We dismiss the appeal for lack of jurisdiction.

In March 2017, Shaw filed a postconviction motion pursuant to WIS. STAT. § 974.06, alleging that a traumatic brain injury diagnosis constituted newly discovered evidence that justified a new trial on Shaw’s 1982 convictions for first-degree intentional homicide and first-degree sexual assault. Shaw requested that the trial be bifurcated so that he could present an insanity defense.

In October 2017, the circuit court issued its decision denying Shaw’s WIS. STAT. § 974.06 motion. The court concluded both that Shaw’s newly discovered evidence claim was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and that the claim failed on its merits.

Shaw did not appeal the circuit court’s October 2017 decision, but Shaw did file a motion to reconsider the decision. On March 14, 2018, the court entered an order denying Shaw’s reconsideration motion. Shaw appeals the March 14, 2018 order.

“An order denying a motion to reconsider an earlier order is not necessarily appealable.” *Harris v. Reivitz*, 142 Wis. 2d 82, 86, 417 N.W.2d 50 (Ct. App. 1987). “No right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered.” *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). “Although this rule

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

can be a trap for the unwary and at times may be harsh, the policy behind the rule is to prevent a party from extending the time to appeal by filing a motion for reconsideration.” *La Crosse Trust Co. v. Bluske*, 99 Wis. 2d 427, 429, 299 N.W.2d 302 (Ct. App. 1980). To apply the rule, we compare the issues disposed of in the original decision with the issues raised in the motion for reconsideration. *See Harris*, 142 Wis. 2d at 87. We apply the rule liberally in favor of the party seeking to appeal. *See id.* at 88-89.

Here, when we make the requisite comparison, we agree with the State that Shaw’s reconsideration motion raises the same issues as those disposed of in the circuit court’s original decision. As noted, the court concluded in that decision both that Shaw’s newly discovered evidence claim was procedurally barred under *Escalona-Naranjo* and that the claim failed on its merits. Shaw’s reconsideration motion consisted of reasons why, in Shaw’s view, the court was wrong in reaching both conclusions. Shaw asserted that the court misconstrued or overlooked relevant facts, misapplied the *Escalona-Naranjo* standard, and misapplied the newly discovered evidence criteria. These assertions, no matter how liberally construed, do not present new issues.

Shaw develops no argument explaining how his reconsideration motion might be construed as raising new issues. To the contrary, Shaw all but concedes that the motion did *not* raise new issues. Shaw characterizes the motion as a “rebuttal” to the circuit court’s original decision, and Shaw asserts that the motion stated “how [he] disagreed and believed that [the circuit court] was in error and had not addressed the issues appropriately.”

We note that the final page of Shaw’s reconsideration motion makes passing requests for a “nunc pro tunc competency evaluation,” the appointment of counsel, and “sentence modification of NGI with time served.” These appear to be new requests that were not disposed

of, at least not expressly, by the circuit court's original decision. However, Shaw did not support these requests with new substantive argument in his reconsideration motion. In the absence of such argument, and in the absence of an appellate argument by Shaw on this matter, we are not persuaded that these passing requests can be construed as raising new issues.

Therefore,

IT IS ORDERED that this appeal is summarily dismissed pursuant to WIS. STAT. RULE 809.21(1).

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*