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DISTRICT I

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

2018AP2196 State of Wisconsin v. Reginald M. Clytus (L.C. # 2005CF793)

Before Brash, P.J., Kessler and Dugan, 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).

Reginald M. Clytus, *pro se*, appeals the orders denying his requests 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 (2017-18).[1] We summarily affirm.

Clytus has a history of litigation in this case. For purposes of this appeal, it suffices to state that in 2005, Clytus was charged with first-degree intentional homicide and armed robbery with use of force, both as a party to a crime. He later litigated, but lost, a suppression motion. He then pled guilty to amended charges of first-degree reckless homicide and attempted armed robbery with use of force as a party to a crime.

In his direct appeal, Clytus challenged the circuit court's denial of his WIS. STAT. RULE 809.30 motion for resentencing or sentence modification. *See* ***State v. Clytus*** (***Clytus I***), No. 2007AP578-CR, unpublished slip op. ¶5 (WI App May 19, 2009). We affirmed, *see* ***id.***, ¶1, and the Wisconsin Supreme Court denied Clytus's petition for review.

In 2010, Clytus, *pro se*, filed a WIS. STAT. § 974.06 motion seeking to withdraw his guilty pleas. Clytus argued that trial counsel was ineffective in litigating his suppression motion. The circuit court denied Clytus's motion and the motion for reconsideration that followed. After filing a notice of appeal, Clytus voluntarily dismissed it.

In 2012, Clytus, *pro se*, filed his second WIS. STAT. § 974.06 motion, again seeking to withdraw his guilty pleas. The circuit court denied his motion, and Clytus appealed. *See* ***State v. Clytus*** (***Clytus II***), No. 2012AP1443, unpublished slip op. (WI App June 11, 2013). He argued:

> (1) that he received ineffective assistance from his postconviction lawyer; (2) that he should have been placed under oath during the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

> plea hearing; (3) that he should be allowed to withdraw his guilty plea because the circuit court's plea colloquy was inadequate to establish that he understood the plea; and (4) that he should be allowed to withdraw his guilty plea based on newly discovered evidence.

Id. We affirmed, *see* ***id.***, and the Wisconsin Supreme Court denied Clytus's petition for review.

In 2018, Clytus, *pro se*, filed the two motions underlying this appeal. In the motions, Clytus argued that his confession should have been suppressed and sought an evidentiary hearing. He also argued that he reserved the right to appeal the circuit court's 2005 denial of his motion to suppress as a condition of his pleas. The circuit court denied Clytus's motion to suppress and dismissed his motion to appeal the denial of his 2005 suppression motion. The circuit court also denied the reconsideration motion that followed, explaining: "If the defendant is seeking reconsideration of the suppression ruling made by the circuit court in 2005, he should have raised the issues in his original motion or appeal. To the extent he did not, he is barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 16[8, 178, 517 N.W.2d 157] (1994), from raising it now."

In this appeal, Clytus continues to emphasize that he expressly reserved his right to appeal the denial of his suppression hearing when he entered his guilty pleas and asserts that he is entitled to enforcement of his negotiated plea agreement. He relies on trial counsel's statement at the plea hearing that "there was a suppression hearing and [Clytus] reserves the right to appeal that." In light of his reserved right to appeal, Clytus argues that ***Escalona*** does not apply.

At the outset, we note that the statement on which Clytus relies did not give him a right to relitigate his suppression claim indefinitely in multiple postconviction motions. Instead, trial

counsel simply stated that the guilty-plea-waiver rule did not preclude Clytus from raising his suppression claim on direct appeal. *See* WIS. STAT. § 971.31(10). Yet, he did not do so.

As a result, we must determine whether Clytus's current claims are procedurally barred, which is a question of law that we review *de novo*. *See* ***State v. Allen***, 2010 WI 89, ¶15, 328 Wis. 2d 1, 786 N.W.2d 124.

Clytus acknowledges that he previously claimed, in his 2010 WIS. STAT. § 974.06 motion, that he was entitled to appeal the reserved suppression hearing but suggests that he did so inadequately because as a *pro se* litigant he was "unschooled and unlettered in the law." By his own acknowledgment, Clytus is rearguing a matter he previously litigated. He is barred from doing so.[2] *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.").

Moreover, even if we were to construe Clytus's claims as new, they are barred because he has not provided a sufficient reason for failing to raise them earlier. *See* ***Escalona***, 185 Wis. 2d at 184 (explaining that successive postconviction motions are procedurally barred unless a defendant can establish a sufficient reason for failing to previously raise the newly alleged errors). As succinctly stated by our supreme court in ***Escalona***, "[w]e need finality in our litigation." *See* ***id.***, 185 Wis. 2d at 185. We consider the allegations contained within the four corners of his postconviction motions, not allegations contained within Clytus's appellate briefs. *See* ***State v. Allen***, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433. Clytus does not

[2] To the extent Clytus suggests that his own ignorance of the facts and law should help him to evade the bar, we are not persuaded. If it were, the procedural bar would be eviscerated, as many collateral challenges are raised by *pro se* litigants.

present a sufficient reason in the 2018 postconviction motions underlying this appeal. Consequently, we conclude, as did the circuit court, that Clytus's claims are subject to the procedural bar of ***Escalona***.

Clytus has abused the judicial process by repeatedly litigating the same matters, and his repetitive filings have become burdensome on the court system. The State consequently asks us to warn Clytus that if he continues to file repetitious litigation related to his 2005 convictions, this court may impose conditions restricting the circumstances in which he may pursue appeals in this court. *See* ***State v. Casteel***, 2001 WI App 188, ¶¶24-26, 247 Wis. 2d 451, 634 N.W.2d 338 (imposing sanctions against a litigant because he "abus[ed] the appellate process by repetitively litigating the same matters"). The State's request is appropriate. We therefore caution Clytus that we will not countenance squandering judicial resources with his repeated presentation of the same claims. We are prepared to impose appropriate sanctions should Clytus repeat the claims he has previously made and should we conclude in the future that Clytus's litigation is frivolous, abusively repetitive, or otherwise improper. *See* ***id.***, 247 Wis. 2d 451, ¶¶25-26.

IT IS ORDERED that the orders are summarily affirmed. *See* 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