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MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

May 4, 2021

To:

Hon. Carolina Stark  
Circuit Court Judge  
901 N. 9th St.  
Milwaukee, WI 53233

Scott E. Rosenow  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

John Barrett  
Clerk of Circuit Court  
Room G-8  
901 N. 9th Street  
Milwaukee, WI 53233

Rafeal Dashawn Newson 287339  
Stanley Correctional Inst.  
100 Corrections Dr.  
Stanley, WI 54768

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

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2019AP1464                      State of Wisconsin ex rel. Rafeal Dashawn Newson v. Foster  
(L.C. # 2019CV4649)

Before Dugan, Graham and White, 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).**

Rafeal Dashawn Newson, *pro se*, appeals orders denying his petition for a writ of habeas corpus and his motion for reconsideration.<sup>1</sup> He challenges the legality of his extradition to Wisconsin from Arizona in 2000 to answer a criminal charge against him in this state. Upon review of the briefs and record, we conclude at conference that this matter is appropriate for

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<sup>1</sup> Newson filed his circuit court petition with a cover letter addressed to Judge Maxine Aldridge White, who was at that time the chief judge of the Milwaukee County Circuit Court. The petition itself includes Judge White's name in the caption. The record reflects, however, that the petition was filed by the clerk's office and assigned without involvement of the chief judge's office to the Honorable Carolina Maria Stark, who presided over the matter and denied the writ petition and the motion for reconsideration.

summary disposition.<sup>2</sup> *See* WIS. STAT. RULE 809.21. Newson is not entitled to a writ of habeas corpus because he had another adequate remedy at law and fails to offer a valid reason for not pursuing that remedy in prior litigation. Therefore, we summarily affirm. Additionally, as the State requests, we caution Newson that he may face sanctions if he continues raising the same claims for relief in serial proceedings.<sup>3</sup>

In 2000, Newson was serving a sentence in Arizona when he was extradited to Wisconsin to answer a charge of first-degree intentional homicide as a party to a crime for the 1996 shooting death of Terrance Maclin. The matter, Milwaukee County Circuit Court case No. 2000CF4309, proceeded to a jury trial in March 2001. The jury found Newson guilty as charged. The circuit court imposed a life sentence and ordered Newson to serve the sentence consecutive to the sentence he was serving in Arizona. Newson was then returned to Arizona to complete his sentence there.

Newson went on to file a series of postconviction challenges, five of which previously reached this court.<sup>4</sup> *See State v. Newson (Newson I)*, No. 2002AP959-CR, unpublished op. and

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<sup>2</sup> Newson filed additional submissions after briefing was complete, designating the materials “citation of supplemental authorities.” *See* WIS. STAT. RULE 809.19(10) (2019-20). Submissions under that rule permit citation of “authorities decided after briefing.” *See id.* None of the citations in Newson’s additional submissions were decided after briefing was completed in this matter on January 31, 2020, and one citation is to a case decided in 1926. Nevertheless, we accepted his additional submissions and have taken them into account in resolving the instant appeal. All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>3</sup> Although the named respondent in this matter is the warden of the institution where Newson is confined, the Wisconsin Department of Justice represents the warden on appeal and filed the respondent’s brief. We therefore refer to the respondent as the State. *See State ex rel. Lopez-Quintero v. Dittmann*, 2019 WI 58, ¶16 n.7, 387 Wis. 2d 50, 928 N.W.2d 480.

<sup>4</sup> This court’s records reflect that additional appellate challenges from Newson are currently pending.

order (WI App Sept. 22, 2003); *State v. Newson (Newson II)*, No. 2004AP2988, unpublished slip op. (WI App Sept. 20, 2005); *State v. Newson (Newson III)*, No. 2010AP2714, unpublished op. and order (WI App May 31, 2011); *State ex rel. Newson v. Circuit Court (Newson IV)*, No. 2011AP1569-W, unpublished op. and order (WI App July 27, 2012); and *State v. Newson (Newson V)*, No. 2017AP551, unpublished slip op. (WI App Sept. 18, 2018). As was the case in *Newson V*, an overview of Newson's prior litigation is required, and we rely in part on the summary we included in that decision.

In *Newson I*, Newson pursued a direct appeal with the assistance of counsel. He challenged the circuit court's decision to admit hearsay testimony from a witness who refused to testify. We affirmed. *See Newson V*, No. 2017AP551, ¶7.

Newson next pursued a postconviction motion *pro se* under WIS. STAT. § 974.06. The motion, filed in 2004 while Newson was imprisoned in Arizona, raised multiple claims of ineffective assistance as to both his trial counsel and his appellate counsel:

His ineffective assistance claims against his trial counsel included failing to challenge Newson's confession to police, failing to call alibi witnesses, failing to challenge statements made by the prosecutor during closing arguments, and failing to object when the circuit court allowed certain exhibits to be given to the jury during deliberations. Newson's claim against his appellate counsel was that, among other things, appellate counsel failed to raise these issues on direct appeal. The circuit court denied the motion without a hearing, finding that the record conclusively showed that Newson was not entitled to relief.

*Newson V*, No. 2017AP551, ¶8. This court affirmed. *See Newson II*, No. 2004AP2988, ¶3.

In 2010, Newson, again *pro se* and while still imprisoned in Arizona, filed a second postconviction motion under WIS. STAT. § 974.06:

Newson again claimed ineffective assistance of trial counsel, this time for counsel's failure to challenge the circuit court's jurisdiction on grounds that the criminal complaint was defective: the record indicates that the complaint was not filed until August 29, 2000—after Newson had already been extradited to Wisconsin—instead of when it was originally executed in 1996. Newson argued that this “defect” resulted in the circuit court lacking jurisdiction to have him extradited for trial in Wisconsin.

The circuit court determined that Newson's motion was barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994)... Newson initially appealed the circuit court's order denying his motion but later filed a notice for voluntary dismissal; thus, that appeal was dismissed in July 2011. [See *Newson III*, No. 2010AP2714.]

*Newson V*, No. 2017AP551, ¶¶9-10 (footnote omitted).

In this court, Newson next renewed the arguments that he pursued in his 2010 postconviction motion, seeking review by petition for a writ of habeas corpus. See *id.*, ¶11. We denied the petition:

Our reasoning was that Newson had not explained why he had not raised the jurisdictional challenge in his previous WIS. STAT. § 974.06 motion submitted in 2004. *Newson [IV]*, No. 2011AP1569-W at 3. We therefore determined that Newson had not demonstrated that there was no other adequate remedy available, as required for a writ of habeas corpus to be issued.

*Newson V*, No. 2017AP551, ¶11.

In 2016, Newson was released from prison in Arizona and sent back to Wisconsin to serve his life sentence for the Wisconsin homicide. In 2017, he filed a third postconviction motion *pro se* under WIS. STAT. § 974.06. In that motion:

[Newson] again challenged the circuit court's jurisdiction in this matter due to the allegedly defective complaint. He further argued that his motion should not be barred because when he filed the

previous § 974.06 motions, he was in custody in Arizona as opposed to Wisconsin, and therefore Wisconsin courts did not have jurisdiction over his previous postconviction motions at the time they were decided. Furthermore, Newson argued that he did not have access to Wisconsin law materials when he was preparing those prior postconviction motions.

*Newson V*, No. 2017AP551, ¶12. The circuit court denied Newson’s motion.

Newson obtained counsel and pursued an appeal. *See id.* & n.3. In this court, he alleged “ineffective assistance of both trial and postconviction counsel for not raising the argument that the failure to file the complaint prior to his extradition from Arizona is a fatal procedural flaw that left the circuit court without jurisdiction, and renders the judgment against him invalid.” *Id.*, ¶14. We rejected his claims, concluding that they were procedurally barred because he failed to provide a sufficient reason for not raising them in the WIS. STAT. § 974.06 motion that he filed in 2004. *See Newson V*, No. 2017AP551, ¶¶3, 16.

Newson next filed the petition for a writ of habeas corpus underlying the instant appeal. He alleged that he was extradited from Arizona before the Wisconsin criminal complaint was filed and that the complaint and arrest warrant had incorrect markings and lacked proper signatures. He argued that the extradition therefore violated the interstate agreement on detainers, *see* WIS. STAT. § 976.05, and consequently the Wisconsin courts lacked subject matter jurisdiction over the criminal proceeding that led to his conviction. The circuit court denied the petition, and then denied his motion seeking reconsideration of that decision. Newson appeals.

“A circuit court’s order denying a petition for writ of habeas corpus presents a mixed question of fact and law.” *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12 (italics omitted). We will uphold a circuit court’s factual determinations unless they are

clearly erroneous, but we review independently whether the writ is available to the party seeking relief. *See id.*

Habeas corpus is an extraordinary writ and is available in only limited circumstances. *See id.*, ¶8. To obtain relief, a petitioner must show:

(1) restraint of his or her liberty, (2) which restraint was imposed contrary to constitutional protections or by a body lacking jurisdiction and (3) no other adequate remedy available at law. Habeas corpus is not a substitute for appeal and therefore, a writ will not be issued where the “petitioner has an otherwise adequate remedy that he or she may exercise to obtain the same relief.”

*Id.* (citations and italics omitted). Additionally, a person who petitions for a writ of habeas corpus following a criminal conviction will not prevail if: “(1) the petitioner asserts a claim that he or she could have raised during a prior appeal, but failed to do so, and offers no valid reason to excuse such failure,” *see id.*, ¶9; or if “(2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict,” *see id.* Based on these principles, Newson cannot prevail in the instant litigation.

Newson had adequate remedies at law for raising his current claims. First, he could have pursued the issues under WIS. STAT. RULE 809.30, which permits a convicted person to raise challenges to the conviction and sentence by postconviction motion and direct appeal of right. *See State v. Debra A.E.*, 188 Wis. 2d 111, 122-23, 523 N.W.2d 727 (1994). Second, he could have pursued the issues in a collateral attack on his conviction by filing a postconviction motion under WIS. STAT. § 974.06. That statute is intended as the primary vehicle for a convicted prisoner to raise constitutional and jurisdictional claims after the time to appeal the conviction has passed. *See State v. Henley*, 2010 WI 97, ¶50, 328 Wis. 2d 544, 787 N.W.2d 350.

Newson failed to raise his current claims in the direct appeal that he pursued in *Newson I*, and he failed to raise them in the motion that he filed in 2004 under WIS. STAT. § 974.06. Therefore, *Pozo* requires that he offer a valid reason for his failures before he may proceed with his writ petition. See *id.*, 258 Wis. 2d 796, ¶9. This requirement is similar to the duty of a convicted person to offer a sufficient reason for serial litigation before proceeding with a second or subsequent postconviction motion under § 974.06. Cf. *State ex rel. Washington v. State*, 2012 WI App 74, ¶26 & n.15, 343 Wis. 2d 434, 819 N.W.2d 305.

Newson first contends that his appellate counsel was ineffective for failing to raise his claims and therefore he has a valid reason for additional postconviction litigation. Assuming without deciding that his appellate counsel's alleged ineffectiveness is a valid reason for Newson's failure to raise his current claims in *Newson I*, that reason fails to explain Newson's failure to raise the claims himself in 2004. Appellate counsel's alleged ineffectiveness therefore cannot serve as a valid reason for permitting Newson's current litigation.

Newson next alleges that he had a valid reason for failing to raise his current claims in his 2004 postconviction motion because he was confined in Arizona and had "no legal knowledge or assistance at all." These allegations are unavailing. *Pro se* litigants typically lack legal knowledge. See *Pruitt v. Mote*, 503 F.3d 647, 663 (7th Cir. 2007). If limited legal knowledge was a valid reason for failing to raise claims, the reason would entirely swallow the rule barring serial litigation absent an adequate excuse. Instead, courts recognize that ignorance of the law does not provide a defense. See *State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 681 N.W.2d 230; see also *Jackson v. Baenen*, No. 12-CV-00554, 2012WL5988414, at \*1 (E.D. Wis. Nov. 29, 2012) (observing that "[n]o Wisconsin court has recognized ignorance of the law as a 'sufficient reason' under [WIS. STAT. ]§ 974.06(4)"). Moreover, Newson's litigation history

reflects that his confinement in Arizona did not prevent him from researching Wisconsin law. Indeed, his appellant's brief in this case acknowledges that while he was confined in Arizona, he marshaled his resources and obtained help from family members in researching and preparing both the postconviction motion that he filed in circuit court in 2010, and the petition for a writ of habeas corpus that he pursued in this court in 2011. In short, Newson fails to establish a valid reason for failing to raise his current claims in his first *pro se* postconviction motion.

Newson alternatively asserts that he is excused from the obligation to show a valid reason for failing to raise his claims in any WIS. STAT. § 974.06 motion filed while he was incarcerated in Arizona because his imprisonment outside of Wisconsin deprived the Wisconsin circuit courts of subject-matter jurisdiction and the power to grant him any relief. This court, however, previously considered and rejected this theory:

[T]here is no language in WIS. STAT. § 974.06 that limits its requirements to defendants who are in custody in Wisconsin. Thus, interpreting the statute in the manner requested by Newson would go against our rules of statutory interpretation, which include giving the language its “common, ordinary, and accepted meaning,” giving “reasonable effect to every word, in order to avoid surplusage,” so as to “avoid absurd or unreasonable results.”

*Newson V*, No. 2017AP551, ¶17 (citation omitted). Because we have considered and rejected Newson's subject-matter jurisdiction argument, Newson may not present it again in the instant litigation.<sup>5</sup> See *Pozo*, 258 Wis. 2d 796, ¶9 (citation omitted) (explaining that “[a] matter once

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<sup>5</sup> For the sake of completeness, we also observe that “no circuit court is without subject matter jurisdiction to entertain actions of any nature whatsoever.” *City of Eau Claire v. Booth*, 2016 WI 65, ¶18, 370 Wis. 2d 595, 882 N.W.2d 738 (citations omitted).



litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue”).

Newson thus is not entitled to a writ of habeas corpus. He had alternative legal remedies, and he fails to present a valid reason for not raising his current claims in earlier proceedings.

Before considering the State’s request that we caution Newson against repetitious postconviction litigation, we address a last argument in his appellate briefs, namely, his allegation that the circuit court misconstrued his petition as resting on a claim that the circuit court did not sign the criminal complaint. Newson emphasizes that his “main claim” is that “the original criminal complaint was not filed before extradition,” thus violating the interstate agreement on detainers. He goes on to allege that justice has miscarried because the circuit court did not properly describe his theory of the case. This argument does not provide a basis for relief. For the reasons we have discussed, Newson is not entitled to a writ of habeas corpus as a matter of law. The circuit court therefore correctly resolved the petition by denying it, regardless of the specific analysis that the circuit court conducted. Accordingly, we must affirm. *See State v. Alles*, 106 Wis. 2d 368, 391, 316 N.W.2d 378 (1982).

We turn, then, to the State’s request that we caution Newson against serial pursuit of postconviction litigation based on the same facts and theories as those he previously presented. We agree that a caution is appropriate. Newson has claimed in multiple proceedings that errors in the extradition process resulted in jurisdictional flaws that invalidate the judgment of conviction against him in Milwaukee County Circuit Court case No. 2000CF4309. *See Newson V, passim*. The circuit court and this court have rejected those claims in the past, and we have rejected them again in the instant appeal. This issue is resolved. Accordingly, Newson

is on notice that we are prepared to impose appropriate sanctions should he persist in making repetitive allegations, regardless of whether they are couched as motions, petitions, or appeals. *See State v. Casteel*, 2001 WI App 188, ¶¶23-27, 247 Wis.2d 451, 634 N.W.2d 338; *see also* WIS. STAT. RULES 809.25(3), 809.83(2). We will not countenance expending scarce judicial resources in considering and reconsidering one individual's claims.

Therefore,

IT IS ORDERED that the circuit court's orders are summarily affirmed. *See* 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*