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**DISTRICT II**

October 6, 2021

To:

Hon. Kent R. Hoffmann  
Circuit Court Judge  
Electronic Notice

Melody Lorge  
Clerk of Circuit Court  
Sheboygan County  
Electronic Notice

Joel Urmanski  
Electronic Notice

Jacob J. Wittwer  
Electronic Notice

Michael M. Moffett, #384291  
Green Bay Correctional Inst.  
P.O. Box 19033  
Green Bay, WI 54307-9033

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

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2019AP1973

State of Wisconsin v. Michael M. Moffett (L.C. #2009CF143)

Before Gundrum, P.J., Neubauer and Reilly, 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).**

Michael M. Moffett appeals pro se from an order denying his 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. RULE 809.21 (2019-20).<sup>1</sup> We affirm the order of the circuit court.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version.

In 2010, Moffett was convicted upon a jury verdict of first-degree intentional homicide in the shooting death of Luis DeLeon. The circuit court imposed a sentence of life in prison.

In 2012, this court affirmed Moffett's conviction. *State v. Moffett*, No. 2011AP1290-CR, unpublished op. and order (WI App Feb. 15, 2012). In doing so, we rejected his challenge to the sufficiency of the evidence.

Since his direct appeal, Moffett has unsuccessfully pursued postconviction relief multiple times. In late 2012, he filed a pro se motion for postconviction discovery. In 2013, he filed a pro se WIS. STAT. § 974.06 motion, raising a number of different issues.<sup>2</sup> Each time the circuit court denied his motion, and Moffett appealed. We affirmed the orders of the circuit court. *State v. Moffett*, No. 2012AP2564, unpublished op. and order (WI App June 5, 2013); *State v. Moffett*, No. 2013AP2187, unpublished slip op. (WI App Sept. 10, 2014).

In 2019, Moffett filed another pro se WIS. STAT. § 974.06 motion, which is the subject of this appeal. In it, he renewed several arguments made in the earlier WIS. STAT. § 974.06 motion. He also advanced new claims of ineffective assistance, faulting trial counsel for (1) not interviewing a witness before the preliminary hearing; (2) failing to hold the prosecution to its burden of proof at trial; and (3) making false statements to the circuit court about the existence of an altercation between his family and the victim's family, which resulted in extra security at trial. Additionally, Moffett raised a claim of newly discovered evidence based upon a 2011 statement

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<sup>2</sup> In the WIS. STAT. § 974.06 motion, Moffett accused trial counsel of ineffective assistance for (1) failing to object to the contents of the autopsy report at the preliminary hearing; (2) failing to investigate the jacket worn by the victim; and (3) suborning perjury from two defense witnesses. Moffett also argued that he was denied a fair trial because of certain security measures ordered by the circuit court.

by his cousin. Finally, he faulted postconviction counsel for failing to raise the claims and asserted that their cumulative effect deprived him of a fair trial. The circuit court denied the motion. This appeal follows.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185. Furthermore, a defendant may not relitigate a matter previously litigated, “no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Applying these principles to the case at hand, we conclude that Moffett’s latest postconviction motion is procedurally barred. Claims that were litigated in the earlier WIS. STAT. § 974.06 motion cannot be relitigated. *Id.* As for the other issues raised in the postconviction motion, Moffett has not demonstrated a sufficient reason for failing to raise them earlier. *See Escalona-Naranjo*, 185 Wis. 2d at 185. Accordingly, we are satisfied that the circuit court properly denied his motion.<sup>3</sup>

Upon the foregoing reasons,

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<sup>3</sup> To the extent we have not addressed an argument raised by Moffett on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

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*