



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

October 27, 2021

To:

Hon. Kristine E. Drettwan
Circuit Court Judge
Electronic Notice

Kara Lynn Janson
Electronic Notice

Kristina Secord
Clerk of Circuit Court
Walworth County
Electronic Notice

James A. Walrath
Electronic Notice

Zeke Wiedenfeld
Electronic Notice

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

2020AP250-CR

State of Wisconsin v. Paula L. Schwerdtfeger (L.C. #2013CF63)

Before Reilly, J.¹

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).

Paula L. Schwerdtfeger appeals from the imposition of a civil judgment against her, resulting from her failure to pay court-ordered restitution during her probationary period. She argues that the civil judgment is erroneous in the amount and is “invalid” as it was based upon her no contest plea. We previously addressed these arguments in Schwerdtfeger’s direct appeal.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2019-20). All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

See *State v. Schwerdtfeger*, Nos. 2018AP1322-CR, 2018AP1323-CR, unpublished slip op. (WI App Aug. 26, 2020) (*Schwerdtfeger I*). Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. We affirm on the procedural ground that Schwerdtfeger has already had her day in court and that the validity and amount of the civil judgment against her is proper.

Schwerdtfeger pled no contest to criminal damage to property on January 20, 2016. Schwerdtfeger stipulated to the facts in the criminal complaint as a basis for her plea, and she understood when she entered her plea that restitution would be ordered. A two-day restitution hearing was held. The victims' testimony was found to be credible, and restitution was set at \$141,850.47. Schwerdtfeger did not testify at the restitution hearing. Schwerdtfeger was thereafter sentenced to a one-year term of probation with the condition that she pay the restitution amount in full.²

Schwerdtfeger appealed the validity and amount of her restitution order in *Schwerdtfeger I*. On August 26, 2020, we denied her appeal and affirmed the restitution order. *Schwerdtfeger I*, Nos. 2018AP1322-CR, 2018AP1323-CR, ¶1. The Wisconsin Supreme Court denied review.

While Schwerdtfeger's direct appeal was pending, she was discharged from probation. At the probation review hearing, the court noted that Schwerdtfeger had paid only \$2700 in restitution, which was "a paltry amount" given the damage inflicted on the victims' home, but it

² Schwerdtfeger's probation was extended once for one year based on her failure to make a good faith effort to make payments toward the restitution.

determined that given her financial circumstances, she had recently made a good faith effort to make payments. While the circuit court discharged Schwerdtfeger from probation, it also ordered a civil judgment in the amount of the unpaid restitution pursuant to WIS. STAT. § 973.09(3)(b) and refused to stay the entry of the judgment until we decided Schwerdtfeger’s direct appeal. Schwerdtfeger now appeals from that order.

Schwerdtfeger attempts to relitigate what has already been litigated. She may not do so as Wisconsin law is clear: “A matter once litigated may not be relitigated in a subsequent postconviction proceeding 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). On direct appeal, Schwerdtfeger argued that (1) “the restitution order lacked a sufficient basis in the evidence, and also was insufficient to support a subsequent civil judgment against her”; (2) her no contest plea was “insufficient to support the restitution order”; and (3) “the entire restitution judgment of \$141,850.47 was barred by claim and/or issue preclusion, as the victims had already prosecuted and secured their property damage claim in bankruptcy court.”³ See *Schwerdtfeger I*, Nos. 2018AP1322-CR, 2018AP1323-CR, ¶¶29, 66-95.

In this appeal, Schwerdtfeger argues that (1) her civil judgment should be reversed as the court “relied on inadmissible evidence to reach its judgment”; (2) the use of her no contest plea as a basis for the civil judgment was improper; and (3) “[t]he dollar amount of property damage suffered by [the victims], which is reflected in their part of the civil judgment, otherwise should

³ It is clear from the record that at the time of *Schwerdtfeger I*, the victims had “not recovered anything from the bankruptcy judgment.” *State v. Schwerdtfeger*, Nos. 2018AP1322-CR, 2018AP1323-CR, unpublished slip op. ¶22 (WI App Aug. 26, 2020) (*Schwerdtfeger I*). Schwerdtfeger does not argue anything to the contrary in this appeal.

have been limited to the amount of the prior federal bankruptcy court judgment.” Schwerdtfeger’s current appeal challenging the validity and amount of restitution entered as a civil judgment is merely a repackaged version of her arguments that were raised and adjudicated in *Schwerdtfeger I* and are, accordingly, procedurally barred. We need not and will not entertain a second kick at the cat. The final order of December 20, 2019, of the Walworth County Circuit Court is affirmed.

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.

Sheila T. Reiff
Clerk of Court of Appeals