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DISTRICT I

September 13, 2022

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Michael P. Cotton 313238
New Lisbon Correctional Institution
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2021AP1749

State of Wisconsin v. Michael P. Cotton (L.C. # 2011CF71)

Before Donald, P.J., Dugan 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).

Michael P. Cotton, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2019-20).¹ Cotton argues that his constitutional rights to equal protection and due process were violated. We conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

After a jury trial, Cotton was convicted of two counts of first-degree sexual assault of a child under the age of thirteen and two counts of first-degree sexual assault of a child under the age of twelve. He was sentenced to thirty-five years of initial confinement and twenty years of extended supervision. Cotton filed a postconviction motion by appointed counsel, which the circuit court denied. The circuit court then granted counsel's motion to withdraw because Cotton wanted to proceed *pro se*. Cotton filed a second postconviction motion *pro se*, which the circuit court denied. We affirmed Cotton's conviction on direct appeal. Cotton then brought a postconviction motion pursuant to WIS. STAT. § 974.06 collaterally attacking his conviction. The circuit court denied the motion. This appeal follows.

A defendant who has pursued a postconviction motion or a direct appeal may not seek collateral review of an issue that was or could have been raised in an earlier proceeding unless the defendant can show a sufficient reason exists for failing to raise the issue earlier. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). "Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law subject to *de novo* review." *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Cotton contends that he could not have raised his current constitutional claims in a prior postconviction motion because his current claims are against the circuit court that presided over his WIS. STAT. RULE 809.30 motion. This is not a sufficient reason for failing to previously raise these claims and, thus, escape the procedural bar of *Escalona-Naranjo*. Cotton was required to raise his concerns about the circuit court's decision when it decided his motion under RULE 809.30 during his direct appeal. As explained in *Escalona-Naranjo*, "[w]e need finality in

our litigation.” *Id.*, 185 Wis. 2d at 185. Cotton’s current motion is procedurally barred by *Escalona-Naranjo*.

IT IS ORDERED that the order of the circuit court is 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