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**DISTRICT IV**

September 29, 2022

To:

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Portage, WI 53901

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

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2020AP1880-CR                      State of Wisconsin v. Caleb D. Smalley (L.C. # 2011CF11)

Before Blanchard, P.J., Fitzpatrick, and Nashold, 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).**

Caleb D. Smalley, pro se, appeals a circuit court order that denied Smalley's motion for exemption from the sex offender registration requirements under WIS. STAT. § 301.45(1m) (2019-20).<sup>1</sup> Smalley's motion was based on the argument that the circuit court erred in denying previous motions that Smalley had made seeking the same relief on the same basis. Based upon

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

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. We summarily affirm.

Smalley was convicted of sex offenses in October 2011. In October 2017, Smalley filed a motion in the circuit court requesting exemption from the sex offender registration requirements under WIS. STAT. § 301.45(1m). Smalley argued that he met the requirements for exemption because registration was not necessary to protect the public interest. Specifically, he argued that registration was not necessary to protect the public because his sex offenses were factually consensual, and because it had been five years since his conviction and he had not committed any new sex crimes. The court rejected Smalley’s arguments and found that registration was necessary to protect the public interest. *See* § 301.45(1m)(a)1m.d. (requirements for exemption include that “[i]t is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements”). On that basis, the court denied the motion.

In September 2018, Smalley filed a second motion to be exempted from sex offender registration under WIS. STAT. § 301.45(1m). Smalley argued again that registration was not required to protect the public. The circuit court denied the motion on grounds that the court had already denied the same motion in November 2017. Smalley appealed from the court’s subsequent order denying reconsideration, and we dismissed that appeal on jurisdictional grounds. We explained that the notice of appeal was timely only as to the order denying reconsideration, but that the order denying reconsideration did not decide any new issues. *See Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988) (appeal cannot be taken from an order denying a motion for reconsideration which presents the same issues as those determined in the order sought to be reconsidered).

This brings us to the subject of this appeal. In November 2020, Smalley filed yet another motion for exemption from sex offender registration under WIS. STAT. § 301.45(1m). In this most recent motion, Smalley asserted only the following to the circuit court: “As you know, I meet the requirements to be exempt from the registry. Due to your unlawful refusal to grant my previous motions ... I have been convicted of failing to notify the registry of certain information.” The circuit court denied the motion on grounds that the issue had already been decided.

Smalley argues that nothing in WIS. STAT. § 301.45(1m) states that a defendant may file only one motion to be exempt from the sex offender registration. He contends that a defendant may file a motion for exemption at any time if the defendant becomes eligible for exemption. Assuming all that to be true, Smalley’s motion presented nothing new to the circuit court. Rather, what he argued in the motion was only that the circuit court erred in denying Smalley’s previous motions. The circuit court properly denied that argument as previously decided. *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 no matter how artfully the defendant may rephrase the issue.”).

Therefore,

IT IS ORDERED that the order 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*