



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](http://www.wicourts.gov)

**DISTRICT I**

October 4, 2022

To:

Hon. Hannah C. Dugan  
Circuit Court Judge  
Electronic Notice

Kara Lynn Janson  
Electronic Notice

Hon. Lindsey Canonie Grady  
Circuit Court Judge  
Electronic Notice

Anthony Russomanno  
Electronic Notice

George Christenson  
Clerk of Circuit Court  
Milwaukee County Appeals Division  
Electronic Notice

Tyrone D. Smith  
5555 N. Teutonia Ave.  
Milwaukee, WI 53209

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

---

2021AP1259

State of Wisconsin ex rel. Tyrone D. Smith v. Daniel Winkleski  
(L.C. # 2021CV1987)

Before Brash, C.J., Donald, P.J., and White, J.

**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).**

Tyrone D. Smith, *pro se*, appeals the circuit court's order denying his motion for reconsideration. The dispositive issue is whether we have jurisdiction over this appeal. We conclude that this appeal is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21

(2019-20).<sup>1</sup> Upon review, we conclude that we do not have jurisdiction and, therefore, we dismiss this appeal.

Smith was convicted of first-degree sexual assault of a child in 2007. Since his conviction, Smith has pursued a direct appeal and a series of postconviction motions collaterally attacking his conviction. As it pertains to this appeal, Smith filed a petition for writ of habeas corpus in the circuit court on April 1, 2021, arguing that the circuit court lacked subject matter jurisdiction to convict him. On April 13, 2021, the circuit court denied the petition. On June 22, 2021, Smith filed a motion for reconsideration of the circuit court's order denying his petition. On June 28, 2021, the circuit court denied the motion for reconsideration.

On July 20, 2021, Smith filed a notice of appeal, indicating that he sought to appeal the April 13, 2021 order denying his petition for writ of habeas corpus and the June 28, 2021 order denying his motion for reconsideration. On September 22, 2021, we concluded that we lacked jurisdiction to review the April 13, 2021 order because Smith did not timely file a notice of appeal. We explained that the April 13, 2021 order was a final order from which an appeal as of right could be taken. *See* WIS. STAT. § 808.03(1). We further explained that the ninety-day appeal deadline in WIS. STAT. § 808.04(1) applied. Because Smith's notice of appeal was filed more than ninety days after entry of the April 13, 2021 order, we concluded that we lacked jurisdiction to review the order. *See* WIS. STAT. RULE 809.10(1)(e). We ordered the parties to address whether we had jurisdiction over the June 28, 2021 order denying Smith's motion for reconsideration as

---

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

the first issue in their briefs, explaining that the record before us at the time was insufficient to determine the issue.

“No right of appeal exists from an order denying a motion to reconsider which presents the same issues as those determined in the order or judgment sought to be reconsidered.” See *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). This prevents a party from using a motion for reconsideration to extend the time to appeal from a judgment or order when that time has expired. *Id.*; see also *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 26, 197 N.W.2d 752 (1972).

Smith’s motion for reconsideration did not raise any new issues. It simply reframed or restated the arguments he raised in his petition for a writ of habeas corpus. Therefore, we lack jurisdiction over this appeal. See *Silverton Enters., Inc.*, 143 Wis. 2d at 665. Moreover, even if we had jurisdiction over this appeal, Smith has already unsuccessfully raised his argument that the circuit court lacked subject matter jurisdiction to convict him. “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). Because Smith already unsuccessfully litigated this issue, we will not consider the issue again.

IT IS ORDERED that this appeal is dismissed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

---

*Sheila T. Reiff*  
Clerk of Court of Appeals