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**DISTRICT III**

January 18, 2023

To:

Hon. Sarah Mae Harless  
Circuit Court Judge  
Electronic Notice

Susan Schaffer  
Clerk of Circuit Court  
Eau Claire County Courthouse  
Electronic Notice

Robert Probst  
Electronic Notice

Miquel D. Brown 319816  
Kettle Moraine Correctional Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

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2021AP1559-CR

State of Wisconsin v. Miquel D. Brown (L. C. No. 2002CF59)

Before Hruz, Gill 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).**

Miquel Brown, pro se, appeals an order denying his most recent postconviction motion. Brown contends that he is entitled to sentence modification because he was sentenced under an inaccurate statute number after he was convicted of a lesser-included offense. After reviewing 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 on the grounds that the issue raised is procedurally barred.

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

In 2005, this court affirmed Brown's convictions for two counts of delivering cocaine and one count of possessing more than fifteen grams of cocaine with intent to deliver. *State v. Brown*, No. 2003AP3257-CR, unpublished slip op. ¶1 (WI App Feb. 8, 2005). In doing so, we rejected Brown's challenge to what he viewed as a defective amended Information. In the years since, Brown has filed a series of postconviction motions and additional appeals, continuing to attack various aspects of the amended Information and a related clerical error on the judgment of conviction. See *State v. Brown*, No. 2006AP1156, unpublished slip op. (WI App Oct. 17, 2006); *State v. Brown*, No. 2007AP2699, unpublished slip op. (WI App July 22, 2008); *State v. Brown*, No. 2009AP1686, unpublished slip op. (WI App Apr. 26, 2010); *State v. Brown*, No. 2011AP842, unpublished slip op. (WI App Apr. 25, 2012); *State v. Brown*, No. 2013AP1106, unpublished slip op. (WI App Mar. 4, 2014); and *State v. Brown*, No. 2019AP568, unpublished slip op. (WI App Feb. 2, 2021).<sup>2</sup>

In each of Brown's last six appeals, we have held that his successive challenges to the amended Information and the related clerical error on the judgment of conviction are procedurally barred by WIS. STAT. § 974.06(4), *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and *State v. Witkowski*, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991). Additionally, in Brown's most recent appeal, we cautioned Brown that if he should continue to file abusively repetitive litigation, this court could limit his future filings based upon our inherent authority to efficiently and effectively provide for the fair administration of justice. See, e.g., *State v. Casteel*, 2001 WI App 188, ¶¶19-27, 247 Wis. 2d 451, 634 N.W.2d 338.

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<sup>2</sup> This list does not include additional appeals that were dismissed on procedural grounds prior to briefing in appeal Nos. 2007AP1393, 2007AP1909, 2012AP2528-CR, 2014AP1701, 2015AP1674, and 2021AP750.

In this appeal, Brown asserts that a motion for sentence modification based upon a new factor is not subject to the rule of *Escalona-Naranjo* barring successive postconviction motions under WIS. STAT. § 974.06. Brown cites *State v. Grindemann*, 2002 WI App 106, ¶19 n.4, 255 Wis. 2d 632, 648 N.W.2d 507, which explicitly left as an open question whether the successive motion bar of § 974.06 applies to new-factor motions. We need not resolve that question here, however, for two reasons.

First, the discrepancy on the Information after Brown was convicted of a lesser-included offense is not a new factor that was unknown at the time of sentencing. The prosecutor pointed out the discrepancy to the circuit court immediately after the jury returned the verdict, and the parties' arguments to the court at sentencing were based upon the proper statute.

Second, regardless of whether Brown's motion is actually a new factor motion or whether the *Escalona-Naranjo* bar applies to such motions, *Witkowski* is not limited to motions filed under WIS. STAT. § 974.06. Rather, *Witkowski* bars the relitigation of matters previously litigated, no matter how the defendant might attempt to reframe issues. Brown has already litigated the issues related to the amended Information and clerical error on the judgment of conviction multiple times in both the circuit court and this court. We therefore conclude that the issue raised in this current appeal is procedurally barred.

A court faced with a litigant who has engaged in a pattern of frivolous litigation has the inherent authority to implement a remedy that may include restrictions on that litigant's access to the court. *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 748, 468 N.W.2d 760 (Ct. App. 1991). Otherwise, such abusive litigants may compromise the fair administration of justice by forcing the court to devote its limited resources to processing repetitive and frivolous requests.

*In re Anderson*, 511 U.S. 364, 365 (1994) (per curiam). One method of limiting an abusive litigant's access to the court is to require the litigant to obtain prior approval for any future filings, on a case-by-case basis, so as to prevent additional frivolous suits. *Village of Tigerton v. Minniecheske*, 211 Wis. 2d 777, 785-86, 565 N.W.2d 586 (Ct. App. 1987). This method has the virtue of allowing the litigant continued access to the courts for any meritorious claims that may arise while also comporting with the general disapproval of blanket orders. We conclude such a restriction on Brown's future filings is warranted here.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that due to Brown's abusive, repetitive litigation of essentially the same issues relating to Eau Claire County case No. 2002CF59, henceforth Brown shall be required to submit an affidavit to this court each and every time he attempts to initiate a new appeal or writ relating to that case. The affidavit shall include:

- (1) An attached copy of the decision or order from which he is seeking review;
- (2) A statement setting forth the specific grounds upon which this court could grant relief;
- (3) A statement showing how the issues sought to be raised differ from issues he has previously raised; and
- (4) A statement explaining why any new claims could not have been previously raised.

If this affidavit (or any additional information we may request upon reviewing the affidavit) does not demonstrate that Brown has stated a claim upon which relief could be granted that is not procedurally barred, we will refuse to accept the filing.

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*