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 IV

March 30, 2023

To:

Hon. Todd L. Ziegler
Circuit Court Judge
Electronic Notice

Laura Endres
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

John W. Kellis
Electronic Notice

Scott Allen Dotson 171634
Thompson Corr. Center
434 State Farm Rd.
Deerfield, WI 53531-9562

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

2022AP558-CR	State of Wisconsin v. Scott Allen Dotson (L.C. # 2016CF155)
2022AP559-CR	State of Wisconsin v. Scott Allen Dotson (L.C. # 2016CF450)
2022AP560-CR	State of Wisconsin v. Scott Allen Dotson (L.C. # 2017CF429)
2022AP561-CR	State of Wisconsin v. Scott Allen Dotson (L.C. # 2018CF144)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, 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).

In these consolidated cases, Scott Dotson appeals pro se from identical circuit court orders denying his identical postconviction motions. The circuit court concluded that the claims raised in Dotson's motions are procedurally barred. Dotson argues that the claims are not procedurally barred because he had a sufficient reason for failing to bring the claims in a previous postconviction motion and because the claims fall within an exception for excessive sentence claims. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for

summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).[1] We agree with the circuit court that Dotson's claims are procedurally barred, and, therefore, we affirm.

In 2018, Dotson entered into a global plea agreement disposing of multiple circuit court cases. He was convicted of a sixth-offense OWI, a seventh-offense OWI as a repeater, and two additional crimes as a repeater. After being sentenced, Dotson filed a pro se postconviction motion and amended postconviction motion containing a number of allegations. The motions included claims that Dotson's plea colloquy was defective and that the circuit court erred in finding that there was a factual basis for Dotson's pleas. The circuit court denied the motions, and this court upheld Dotson's convictions on direct appeal. *See* ***State v. Dotson***, No. 2019AP2074, unpublished op. and order (WI App April 1, 2021).

Dotson also filed an additional postconviction motion and supplemental postconviction motion under WIS. STAT. § 974.06. In those motions, Dotson included a claim that his sixth-offense OWI and seventh-offense OWI convictions were improper because some of his prior OWI convictions were "false." The circuit court denied Dotson's § 974.06 motions.

Dotson then filed the postconviction motions that are the subject of this appeal. He claimed that the circuit court erred at the time of his pleas by: (1) accepting his pleas based on inaccurate, false, and perjured information; (2) failing to explain "how the Courts went from a 3rd OWI to a

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

5th and 6th OWI offense without a 4th OWI charge or conviction ever being charged or filed"; and (3) relying on prior OWI convictions that were uncounseled.

As already noted, the circuit court denied Dotson's postconviction motions, concluding that Dotson's claims are procedurally barred.[2] The court stated that most, if not all, of Dotson's claims had been litigated by previous motion. Under ***State v. Witkowski***, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991), "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding." ***Id.*** at 990. The court also stated that, to the extent that Dotson was raising new claims, he had not shown a sufficient reason why the claims were not raised by previous motion. Under ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), a defendant is barred from raising new claims that could have been raised in a previous postconviction motion, unless the defendant shows a "sufficient reason" for failing to raise the claims previously. *See* ***State v. Romero-Georgana***, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668.

Now, in this appeal, Dotson argues that the circuit court erred in concluding that his current claims are procedurally barred. However, Dotson's briefing does not establish that these claims were not already litigated. On the contrary, it appears that Dotson's current claims are variations of previous claims in which he sought to challenge the number of prior countable OWI convictions. A postconviction claim cannot be relitigated "no matter how artfully the defendant may rephrase the issue." ***Witkowski***, 163 Wis. 2d at 990. For these reasons, Dotson does not persuade us that his current claims survive the procedural bar of ***Witkowski***.

[2] The circuit court also briefly explained why it rejected Dotson's claims on the merits.

Even if we were to assume that Dotson's current claims survive the procedural bar of ***Witkowski***, Dotson also does not persuade us that he can overcome the procedural bar of ***Escalona-Naranjo***. Dotson argues that there are two reasons why the procedural bar in ***Escalona-Naranjo*** does not apply to his current claims. We address each argument in turn.

Dotson first argues that he provided a sufficient reason for failing to bring his current claims in a previous postconviction motion. However, Dotson's sufficient reason argument is undeveloped and difficult to understand. Dotson argues that he provided a sufficient reason "because he relied on lies, perjury and false statements 'erroneous statements' [sic] put into the record by [the district attorney] and [defense counsel] and those false documents were what he used until he discovered the new correct documents from the other courts." Neither this argument nor any other assertion in Dotson's briefing persuades us that he had a sufficient reason for failing to bring his current claims in a previous postconviction motion.[3]

Dotson's second reason for arguing that the procedural bar in ***Escalona-Naranjo*** does not apply pertains to an exception to ***Escalona-Naranjo***. More specifically, Dotson argues that his current claims fall under an exception for excessive sentence claims brought pursuant to WIS. STAT. § 973.13.[4] We disagree.

---

[3] In his reply brief, Dotson appears to argue that he provided a sufficient reason for failing to bring his current claims in a previous postconviction motion because another inmate who was then assisting him made errors. We decline to address this argument because it is raised for the first time in Dotson's reply brief. *See* ***Bilda v. County of Milwaukee***, 2006 WI App 57, ¶20 n.7, 292 Wis. 2d 212, 713 N.W.2d 661 ("It is a well-established rule that we do not consider arguments raised for the first time in a reply brief.").

[4] WISCONSIN STAT. § 973.13 provides: "In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings."

The exception is set forth in ***State v. Flowers***, 221 Wis. 2d 20, 586 N.W.2d 175 (Ct. App. 1998). According to ***Flowers***, this exception for excessive sentence claims under WIS. STAT. § 973.13 is "a narrow exception to ***Escalona-Naranjo*** and is only applicable when a defendant alleges that the State has neither proven nor gained the admission of the defendant about a prior felony conviction necessary to sustain [a] repeater allegation." ***Flowers***, 221 Wis. 2d at 30. Here, the record shows that, during the plea proceedings, Dotson personally admitted to the prior felony conviction necessary to sustain the repeater allegations and also personally admitted to the requisite number of prior countable OWI convictions.[5] Accordingly, there was not a lack of proof or admission of Dotson's relevant prior convictions, and the exception described in ***Flowers*** does not apply.

In ***State v. Mikulance***, 2006 WI App 69, 291 Wis. 2d 494, 713 N.W.2d 160, we discussed the ***Flowers*** exception as including claims under WIS. STAT. § 973.13 in which "the penalty given is longer than permitted by law for a repeater." *See* ***Mikulance***, 291 Wis. 2d 494, ¶18. However, Dotson does not show that any of his sentences exceed the statutory maximum as enhanced by the repeater allegation that applies to three of his four convictions and that he personally admitted during the plea proceedings.

Dotson labeled his postconviction motions in this case as motions to correct an excessive sentence under WIS. STAT. § 973.13, and he cited the ***Flowers*** exception in his motions. But Dotson cannot overcome the procedural bar of ***Escalona-Naranjo*** by couching his claims as something they are not. *Cf.* ***State ex rel. McMillian v. Dickey***, 132 Wis. 2d 266, 279, 392 N.W.2d

[5] Additionally, Dotson's counsel stated during the plea proceedings that Dotson and counsel had together verified Dotson's prior convictions.

453 (Ct. App. 1986) (explaining that courts "look beyond the legal label affixed by the prisoner to a pleading and treat a matter as if the right procedural tool was used"), *overruled on other grounds by* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900.

Therefore,

IT IS ORDERED that the circuit court's orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals