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**DISTRICT III**

April 18, 2023

To:

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Clerk of Circuit Court  
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Steven F. Zastrow 165938  
Oshkosh Correctional Inst.  
P.O. Box 3310  
Oshkosh, WI 54903-3310

Charles M. Stertz  
Electronic Notice

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

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2021AP512	State of Wisconsin v. Steven F. Zastrow
2021AP513	(L. C. Nos. 2002CF1013, 2005CF284, 2005CF285)
2021AP514	

Before Stark, P.J., Hruz and Gill, 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).**

Steven Zastrow, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2021-22)<sup>1</sup> postconviction motion to reopen and vacate a 2009 order because of judicial bias. Based upon our review of the briefs and records, we conclude at conference that these appeals are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In 2006, Zastrow was convicted of seven felonies in five separate Outagamie County cases.<sup>2</sup> In 2009, following an evidentiary hearing, the circuit court denied his pro se motion to withdraw the pleas in two of those cases. Zastrow appealed, and we affirmed his convictions and the denial of his postconviction motion for plea withdrawal in the two consolidated appeals. *See State v. Zastrow*, Nos. 2009AP512-CR and 2009AP513-CR, unpublished slip op. (WI App Mar. 9, 2010). Zastrow subsequently filed numerous additional motions for postconviction relief, all of which were denied.

In 2021, Zastrow filed a pro se WIS. STAT. § 974.06 motion directed at the circuit court's 2009 order denying his plea withdrawal motion. Zastrow argued that the court should reopen and vacate the 2009 order because the court's comments at the commencement of the evidentiary hearing on his plea withdrawal motion showed judicial bias. Zastrow also asked that the cases be reassigned to another judge and that he be allowed to withdraw his pleas. The court denied the motion in an oral ruling, concluding Zastrow's motion was barred because he should have raised the judicial bias claim in his direct appeal of the 2009 order. The court also concluded that Zastrow had failed to show judicial bias.

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<sup>2</sup> As pertinent to these appeals, these charges included two counts of forgery in case Nos. 2002CF1013/2021AP512; one count of theft of greater than \$10,000 of movable property in case Nos. 2005CF284/2021AP513; and two counts of felony bail jumping along with single counts of theft of greater than \$10,000 by false representation and issuing greater than \$2,500 of worthless checks in case Nos. 2005CF285/2021AP514. The 2009 order pertained to Zastrow's motion to withdraw his pleas in case Nos. 2002CF1013 and 2005CF285. Zastrow's 2021 WIS. STAT. § 974.06 motion was filed in case Nos. 2002CF1013/2021AP512, 2005CF284/2021AP513, and 2005CF285/2021AP514, but Zastrow expressly declined to file a motion for plea withdrawal in case No. 2005CF284. As a result, there is no 2009 order in that case providing Zastrow with a basis for a judicial bias claim.

Zastrow now appeals. He seeks to reopen and vacate the 2009 order, and he asks that we direct the circuit court to reassign his motions for plea withdrawal to a new judge for decision. We agree with the court that Zastrow has forfeited his judicial bias claim by failing to raise it in his 2009 direct appeal.

The purpose of the forfeiture rule is to enable a circuit court to avoid or correct any error with minimal disruption to the judicial process. See *State v. Ndina*, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. Zastrow had a fair opportunity in his direct appeal challenging the 2009 order, which denied his plea withdrawal motions, to argue that the court was biased against him. Zastrow cites no law authorizing the court to reopen a WIS. STAT. RULE 809.30 proceeding on the ground of judicial bias some twelve years after the motion was decided and eleven years after the order denying relief was upheld on appeal. Allowing Zastrow to now bring his claim to reopen and vacate the 2009 order would be contrary to the fair and orderly administration of justice. Furthermore, Zastrow's failure to timely raise the judicial bias argument in his direct appeal of the 2009 order was his own, as Zastrow represented himself in his direct appeal.

Moreover, Zastrow's present WIS. STAT. § 974.06 motion is an attempt to relitigate his previously adjudicated motions for plea withdrawal. Zastrow's assertion of judicial bias is not a stand-alone claim but merely a vehicle by which he seeks to reopen and vacate the 2009 order. Previously litigated claims may not be relitigated, no matter how artfully they are repackaged. See *State v. Witkowski*, 163 Wis. 2d 985, 990-92, 473 N.W.2d 512 (Ct. App. 1991).

Finally, the circuit court properly denied Zastrow's 2021 WIS. STAT. § 974.06 motion because a defendant cannot bring a successive postconviction challenge without showing a

sufficient reason why the new claim was not raised in the original or amended postconviction motion or the direct appeal. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-86, 517 N.W.2d 157 (1994). Zastrow contends that he had a sufficient reason for his failure to timely raise his judicial bias claim because he was unaware of the legal significance of the alleged bias at the time. Zastrow's pro se status and lack of legal knowledge, however, are insufficient reasons to avoid the procedural bar. *See State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 681 N.W.2d 230. As the procedural bar is dispositive, we shall not reach the merits of Zastrow's judicial bias claims.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. 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*