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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

May 4, 2023

To:

Hon. Elliott M. Levine
Circuit Court Judge
Electronic Notice

Tammy Pedretti
Clerk of Circuit Court
La Crosse County Courthouse
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Winn S. Collins
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Michael A. Alexander 458450
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2021AP2092-CR State of Wisconsin v. Michael A. Alexander (L.C. # 2003CF352)

Before Fitzpatrick, Graham, 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).

Michael Alexander, pro se, appeals a circuit court order denying his postconviction motion. He argues that the court relied on inaccurate information at sentencing and that the court's reliance on inaccurate information is a new factor justifying sentence modification. 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 further conclude that Alexander's motion is procedurally barred, and we affirm on that basis.

In 2004, Alexander was convicted of first-degree intentional homicide, attempted first-degree intentional homicide, and two counts of first-degree recklessly endangering safety. He challenged the convictions by filing postconviction motions and an appeal pursuant to WIS. STAT. RULE 809.30. This court upheld the convictions and affirmed the circuit court's order denying the postconviction motion. *See State v. Alexander*, No. 2007AP1270-CR, unpublished slip op. (WI App May 1, 2008). Alexander then filed subsequent postconviction motions pursuant to WIS. STAT. § 974.06. The circuit court denied the motions, and we affirmed in each instance. *See State v. Alexander*, No. 2011AP2987, unpublished slip op. (WI App Apr. 11, 2013); *State v. Alexander*, No. 2016AP2007, unpublished op. and order (WI App Dec. 26, 2017).

In his current postconviction motion, Alexander alleged that the circuit court relied on inaccurate information at sentencing. He alleged that the court relied on inaccurate information by determining that he was the aggressor in the altercation underlying his offense, contrary to evidence and a stipulation that other individuals were the aggressors. He also alleged that the court relied on inaccurate information by determining that he lacked remorse despite his statement expressing remorse. He argued the court's reliance on inaccurate information constituted a new factor justifying sentence modification. The court denied the motion, concluding that Alexander had not alleged any new factor justifying sentence modification.

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

On appeal, Alexander continues to maintain that the circuit court relied on inaccurate information at sentencing and that the court's reliance on inaccurate information is a new factor justifying sentence modification. The State contends that Alexander's claim is procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree with the State.²

Under *Escalona-Naranjo*, a criminal defendant is generally barred from raising a new claim that could have been raised in a previous postconviction motion, unless the defendant shows a "sufficient reason" for failing to raise the claim previously. See *State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a claim is procedurally barred by *Escalona-Naranjo* is a question of law for our independent review. *State v. Kletzien*, 2011 WI App 22, ¶9, 331 Wis. 2d 640, 794 N.W.2d 920 (citing *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997)).

Here, Alexander could have raised his claim that he was sentenced based on inaccurate information in a previous postconviction motion. The basis for this claim was apparent at the time of sentencing. Further, Alexander has not established a sufficient reason for failing to raise the claim previously.

Alexander argues that his claim is not barred by *Escalona-Naranjo* because he moved for sentence modification based on a new factor. The State concedes that *Escalona-Naranjo* has not

² Because we agree with the State that the motion is procedurally barred, we need not address the State's alternative argument that Alexander's claim lacks merit. See *Barrows v. American Fam. Ins. Co.*, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive.").

been extended to new factor claims but argues that the claim is not a new factor claim. It argues that the claim is effectively a claim for resentencing based on inaccurate information.

We agree with the State and conclude that Alexander cannot overcome the procedural bar of *Escalona-Naranjo* by framing what is effectively a claim for resentencing based on inaccurate information as a claim for sentence modification based on a new factor. *Cf. State ex rel. McMillian v. Dickey*, 132 Wis. 2d 266, 279, 392 N.W.2d 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.

In arguing the contrary, Alexander relies on *State v. Norton*, 2001 WI App 245, 248 Wis. 2d 162, 635 N.W.2d 656. In *Norton*, this court discussed both types of claims together and concluded that sentencing based on inaccurate information “may” constitute a new factor. *See id.*, ¶¶1, 9, 13-14. We conclude for two reasons that Alexander’s reliance on *Norton* is misplaced. First, the court’s opinion in *Norton* does not state or imply that sentencing based on inaccurate information is generally considered a new factor. Second, *Norton* is factually distinguishable. In *Norton*, the defendant was sentenced based on an understanding that his probation would not be revoked in a separate case, but his probation was later revoked, impacting the structure of his sentence. *Id.*, ¶¶10-12. In those circumstances, this court concluded that the sentencing court had relied on inaccurate information and that probation revocation was a new factor. *Id.*, ¶¶1, 13, 16. Here, in contrast, Alexander does not point to any relevant new or unexpected event that occurred after sentencing.

We turn to a separate argument that Alexander makes relating to the indexing of record documents and the circuit court's consideration of his motion. He argues that the circuit court clerk provided him with incorrect document numbers and that, as a result, he used incorrect citations to the record and the court was unable to verify his allegations. He contends that, without accurate citations, the real controversy was not fully tried. We reject this argument because Alexander does not establish that the court considered the wrong documents or otherwise misunderstood his claim. Moreover, our conclusion that the claim is procedurally barred does not depend on whether the court considered incorrect documents or properly understood the claim.

Therefore,

IT IS ORDERED that the circuit court's order is 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