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**DISTRICT I**

January 9, 2024

To:

Hon. Jonathan D. Watts  
Circuit Court Judge  
Electronic Notice

Donald V. Latorraca  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
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Rico Sanders 331049  
Oshkosh Correctional Inst.  
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Oshkosh, WI 54903-3310

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

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2022AP1038

State of Wisconsin v. Rico Sanders (L.C. # 1995CF954600)

Before White, C.J., Donald, P.J., and Geenen, 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).**

Rico Sanders appeals an order of the circuit court denying his postconviction motion for relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup>

In 1995, the State charged Sanders with breaking into the homes of four women, sexually assaulting them, and taking property from their homes. Sanders was fifteen years old when he

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

committed the crimes. In 1997, Sanders entered *Alford*<sup>2</sup> pleas to four counts of first-degree sexual assault, one count of second-degree sexual assault, and one count of armed robbery with the use of force. The circuit court sentenced Sanders to an aggregate of 140 years of imprisonment, with 595 days of presentence credit. Sanders will be eligible for parole in 2030 when he will be fifty-one years old.

Sanders did not immediately pursue a direct appeal. This court reinstated his direct appeal rights in 2006 pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). Sanders then filed a motion to withdraw his *Alford* pleas. The circuit court denied the motion and we affirmed. See *State v. Sanders*, No. 2007AP1469, unpublished slip op. (WI App Sept. 9, 2008).

In 2009, Sanders filed a *pro se* WIS. STAT. § 974.06 motion, asserting that his postconviction lawyer had provided constitutionally deficient representation with respect to moving for plea withdrawal. The circuit court denied the motion and we affirmed. See *State v. Sanders*, No. 2009AP3190, unpublished op. and order (WI App Mar. 16, 2011).

In 2012, Sanders filed another *pro se* WIS. STAT. § 974.06 motion, seeking sentence modification on two grounds. First, Sanders argued that his sentence did not allow for a “meaningful opportunity for parole” as required under *Graham v. Florida*, 560 U.S. 48 (2010), because he would not be eligible for parole until age fifty-one and, he alleged, his life expectancy was sixty-three years. Second, he asserted that the circuit court’s decision to sentence him to a

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<sup>2</sup> See *North Carolina v. Alford*, 400 U.S. 25 (1970).

140-year imprisonment term as a juvenile “constitute[d] cruel and unusual [punishment] in violation of the Eighth Amendment and Article I, Section 6 of [the] Wisconsin Constitution.”

The postconviction court denied the motion, finding that Sanders’s motion was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because Sanders failed to raise the issues in his previous WIS. STAT. § 974.06 motion. Sanders filed a motion for reconsideration, arguing that he should not be procedurally barred from raising issues based on *Graham* because the case had not yet been decided when Sanders filed his first § 974.06 motion. The postconviction court denied reconsideration, but in doing so found *Graham* inapplicable to the facts of Sanders’s case. Sanders appealed. For the purposes of Sanders’s appeal, we assumed that Sanders’s claim was not procedurally barred but concluded that his claim was not controlled by *Graham* because, unlike the facts in *Graham*, Sanders was not serving a life sentence without the possibility of parole. See *State v. Rico Sanders*, No. 2012AP1517, unpublished slip op. (WI App Aug. 5, 2014).

Sanders then sought federal habeas relief. Both the district court and the United States Court of Appeals for the Seventh Circuit rejected his claims. See *Sanders v. Eckstein*, 981 F.3d 637, 640 (7th Cir. 2020).

Sanders then filed the *pro se* WIS. STAT. § 974.06 motion underlying this appeal. Sanders again sought resentencing on the grounds that his sentence fails to comply with *Graham*’s requirement that he receive a meaningful opportunity for parole. Specifically, Sanders argued that he had newly-discovered evidence showing his life expectancy is 50.6 years, which is before he first becomes eligible for parole at age fifty-one, and well before his presumptive mandatory

release date of 2089. Sanders based his life expectancy claim on a document apparently prepared by the ACLU of Michigan's Juvenile Life without Parole Initiative.

The State opposed the motion, arguing that Sanders's claim was procedurally barred and calling into question the reliability of the report cited by Sanders based on issues including the lack of an identifiable author, publisher, and date of publication. The postconviction court denied Sanders's motion without a hearing. This appeal follows.

A postconviction court may properly deny a postconviction motion without a hearing if the defendant's claim is procedurally barred. *State v. Romero-Georgana*, 2014 WI 83, ¶71, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a defendant is procedurally barred from filing a successive postconviction motion is a question of law subject to de novo review. *Id.*, ¶30.

Here, the postconviction court determined that Sanders's WIS. STAT. § 974.06 motion was procedurally barred by *Escalona-Naranjo*, which holds that no claim that could have been raised in a previously filed postconviction motion or on direct appeal can be the basis for a subsequent postconviction motion under § 974.06 unless the circuit court finds there was sufficient reason for failing to raise the claim in the earlier proceeding. *Escalona-Naranjo*, 185 Wis. 2d at 185. The postconviction court rejected Sanders's life expectancy claim, finding that Sanders's documentary support failed to constitute newly-discovered evidence.

We agree that Sanders's allegedly shorter life expectancy does not circumvent the procedural bar because it does nothing to change the fact that Sanders is not entitled to relief under *Graham*. Unlike the sentencing scheme at issue in *Graham* that triggered Graham's life-without-parole sentence, Sanders was sentenced under Wisconsin's indeterminate sentencing scheme, which made him parole-eligible in 2030. We explained this difference in Sanders's

previous appeal. See *Sanders*, No. 2012AP1517, unpublished slip op. at ¶¶12-16. Indeed, Sanders even conceded *Graham*'s inapplicability to the facts of his case. *Id.*, ¶12. We agree with the State that while Sanders's life expectancy may have changed since his previous postconviction motion, "the legal principles as enunciated in *Graham* have not: neither *Graham* nor the Eighth Amendment prohibit the imposition of aggregate sentences for multiple offenses amounting to a *de facto* life sentence like Sanders's sentence." Sanders's supposed shortened life expectancy does not provide a sufficient reason that overcomes *Escalona-Naranjo*'s procedural bar.

Because we conclude that Sanders's claims are procedurally barred, we need not address any of his additional arguments. See *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (stating that appellate courts should decide cases on the narrowest possible grounds).

For the foregoing reasons, we affirm the order denying Sanders's postconviction motion for relief.

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

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*