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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 II

May 1, 2024

To:

Hon. Tricia Walker
Circuit Court Judge
Electronic Notice

Abigail Potts
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Fairly W. Earls, #369129
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2022AP2143

State of Wisconsin v. Fairly W. Earls (L.C. #1997CF268)

Before Gundrum, P.J., Neubauer and Grogan, 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).

Fairly W. Earls, pro se, appeals the denial of his WIS. STAT. § 974.06 (2021-22)¹ motion. 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. We affirm.

We previously articulated the winding history of this prosecution in *State v. Earls*, No. 2014AP57-CR, unpublished slip op. (WI App Apr. 8, 2015). As relevant here, at a federally ordered retrial, Earls was convicted of three counts of first-degree sexual assault of a child and

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

was given consecutive twenty-year sentences on each count. Earls discharged his appointed postconviction attorney and filed a pro se postconviction motion. The motion was denied when Earls failed to produce any witnesses at the *Machner* hearing.² Earls appealed and we affirmed, rejecting multiple of his claims on their merits and concluding he had forfeited his ineffective assistance of counsel claims.

In 2022, Earls filed the present WIS. STAT. § 974.06 motion. Earls argues that the evidence was insufficient to support his convictions; that his convictions violated the common-law corroboration rule under *State v. Hawk*, 2002 WI App 226, 257 Wis. 2d 579, 652 N.W.2d 393; that he should have been charged with, and convicted of, repeated sexual assault of the same child rather than three individual offenses; and that he is entitled to sentence modification because he was given “Multiple Punishments in a Single Prosecution with the Same Statutory Elements.”

The circuit court denied the claims presented in that motion on their merits and also concluded the successive motion was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The procedural bar prohibits a defendant from raising matters that have been “finally adjudicated, waived or not raised in a prior postconviction motion,” unless he or she demonstrates a sufficient reason for failing to earlier allege or adequately raise the issue. *Id.* at 181-82. Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for the failure to raise earlier available claims is a question of law that we

² *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

review de novo. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 552, 849 N.W.2d 668.

All of Earls's claims could have been, but were not, raised in his earlier postconviction motion. Earls presents no reason, let alone a sufficient reason, for failing to earlier raise his sufficiency-of-the-evidence argument or his related corroboration argument. As for his claim that he should have been charged with repeated sexual assault of the same child, he appears to argue that the Wisconsin Supreme Court's decision in *State v. Johnson*, 2001 WI 52, 243 Wis. 2d 365, 627 N.W.2d 455, constitutes a sufficient reason for failing to raise that issue. But it is unclear how *Johnson*, which rejected the defendant's jury unanimity challenge and was decided prior to Earls's retrial, aids Earls. Finally, there is no basis for his assertion that *Boyd v. Boughton*, 798 F.3d 490 (7th Cir. 2015) changed the law so as to make viable his claim that he was subjected to multiple punishments for the same offense. *Boyd* applied the longstanding double jeopardy analysis set forth in *Blockburger v. United States*, 284 U.S. 299 (1932). Accordingly, the *Boyd* decision does not provide a sufficient reason for Earls's failure to earlier raise the double jeopardy issue.

Based on the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. § 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals