

registered sex offender, in Oconto County case No. 2010CF102. In exchange for his no-contest pleas to two counts of possessing child pornography, the State agreed to recommend that the circuit court dismiss and read in the remaining counts from both cases. The State also agreed that its sentence recommendation would not exceed the recommendation made in the presentence investigation report (PSI). The court accepted Locke's no-contest pleas and imposed two consecutive ten-year sentences, each consisting of five years of initial confinement followed by five years of extended supervision. Locke appealed, and this court reversed, concluding that the State had materially and substantially breached the plea agreement with respect to its sentencing recommendation. *State v. Locke*, No. 2012AP2029-CR, unpublished slip op. ¶6 (WI App July 30, 2013). The matter was remanded for resentencing before a different judge. *Id.*, ¶9.

At resentencing, the circuit court imposed two consecutive twenty-five-year terms, each consisting of fifteen years of initial confinement followed by ten years of extended supervision. Locke moved for resentencing, and the parties stipulated that Locke was entitled to another resentencing. At his third sentencing, a different judge imposed two consecutive twelve-year terms, consisting of seven years of initial confinement followed by five years of extended supervision on each count. Locke's appellate counsel filed a no-merit report, and Locke filed a response. Upon this court's consideration of these submissions and our independent review of the record, we affirmed the judgment. *See State v. Locke*, No. 2015AP1860-CRNM, unpublished op. and order (WI App Mar. 1, 2017).

In 2018, Locke moved for sentence modification on new factor grounds. Specifically, Locke argued that because the statute prohibiting a sex offender from photographing a minor had been found unconstitutional, his violation of that statute should not have been read in at sentencing. Locke also claimed that he was unaware of the circumstances under which a

resentencing court could impose a sentence longer than his original sentence. The circuit court denied Locke's motion in an October 3, 2018 order, and this court affirmed. *See State v. Locke*, No. 2018AP2446-CR, unpublished slip op. (WI App Aug. 18, 2020).

In 2022, Locke filed a WIS. STAT. § 974.06 motion for postconviction relief, seeking "release from custody" and "new sentencing" on the ground that he was given a longer sentence upon resentencing than he received when he was originally sentenced. Locke alleged that claims of ineffective assistance of counsel, double jeopardy, and a violation of due process had been previously raised but never addressed by the circuit court. In an order entered on October 3, 2022, the court denied the motion, concluding that Locke's claims were procedurally barred. On November 9, 2022, Locke moved for reconsideration of the court's October 3, 2022 order. The court denied the reconsideration motion in an order entered on January 24, 2023.

On February 10, 2023, Locke filed a notice of appeal from what he identified as an "October 3, 2018" order that denied his "motion to reconsider [WIS. STAT. §] 974.06 denial." As noted above, the October 3, 2018 order was already affirmed by this court. To the extent Locke may have intended to challenge the October 3, 2022 order denying his § 974.06 motion, an appeal from that order is not timely. *See* WIS. STAT. § 808.04(1) (requiring a notice of appeal to be filed within ninety days if a notice of entry of judgment is not filed). Because the notice of appeal was filed 130 days after entry of the October 3, 2022 order, this court lacks jurisdiction to review that order. *See* WIS. STAT. RULE 809.10(1)(e).

Although Locke's notice of appeal was filed within ninety days of the January 24, 2023 order denying reconsideration, an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be

reconsidered.² See *Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a reconsideration motion should not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; see also *Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). Whether a party's motion for reconsideration raised a new issue "presents a question of law that this court reviews de novo." *State v. Edwards*, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136. Because it was unclear whether the motion for reconsideration presented issues that could have been raised in an appeal from the October 3, 2022 order, we directed the parties to address jurisdiction as the first issue in their appellate briefs.

In his brief, Locke states that his reconsideration motion was filed "solely to give the circuit court another chance to correct an illegal sentence," and he considers his motion for reconsideration to be "just a continuation of the [WIS. STAT. §] 974.06 motion." Locke adds that the motion for reconsideration "brings forth the same issues of double jeopardy and due process" that were raised in his § 974.06 motion but never addressed in the order denying that motion. As noted above, the circuit court denied the claims raised in Locke's § 974.06 motion as procedurally barred. Locke could have challenged the court's application of the procedural bar in a timely appeal from the October 3, 2022 order. Ultimately, Locke has failed to establish that any of the arguments raised in his motion for reconsideration could not have been raised in a timely appeal from the October 3, 2022 order. Therefore, we do not have jurisdiction to consider

² Locke's reconsideration motion did not affect the time for appealing because it was not filed after a trial to the circuit court or other evidentiary hearing, nor was it filed within twenty days of the October 3, 2022 order, as required by WIS. STAT. § 805.17(3). See *Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.*, 175 Wis. 2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993) (holding that § 805.17(3) does not apply to reconsideration motions in a summary judgment context).

them. Because we lack jurisdiction to review the only order from which Locke timely appealed, we must dismiss this appeal.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of jurisdiction.

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

Samuel A. Christensen
Clerk of Court of Appeals