

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 30, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP417-CR

Cir. Ct. No. 2005CF2812

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STEVEN L. HASSELKUS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM W. BRASH, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Steven L. Hasselkus, *pro se*, appeals from a reconfinement order and an order denying postdisposition relief. We reject his contentions and affirm the orders of the circuit court.

BACKGROUND

¶2 Hasselkus appeals from orders entered in a Milwaukee County reconfinement proceeding, but sentences imposed by Waukesha County circuit courts in two additional cases are relevant to his claims. We briefly summarize the pertinent aspects of all three dispositions.

¶3 Case No. 1996CF359 arose in 1996 before the advent of truth-in-sentencing. Hasselkus did not successfully complete the probation imposed in that case. After Hasselkus's probation was revoked, the Waukesha County circuit court sentenced him in 2005 to two concurrent indeterminate four-year prison terms. In case No. 2003CF1040, which arose in 2003, Hasselkus also failed to successfully complete probation. Accordingly, the Waukesha County circuit court sentenced him in 2005 to a consecutive, determinate eight-year term of imprisonment, bifurcated as three years of initial confinement and five years of extended supervision. In case No. 2005CF2812, which underlies this appeal, the Milwaukee County circuit court sentenced Hasselkus in 2005 after his guilty plea. The court imposed a consecutive two-year term of imprisonment, bifurcated as one year of initial confinement and one year of extended supervision. Hasselkus went to prison.

¶4 While in prison, Hasselkus completed the challenge incarceration program. Inmates who successfully complete the program are entitled to early release from incarceration. *See* WIS. STAT. §§ 302.045(1), 302.045(3m)(b) (2007-08).¹ Therefore, on August 16, 2006, the Milwaukee County circuit court

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

entered an order modifying Hasselkus's sentence to permit his early release from confinement. Pursuant to § 302.045(3m)(b), the circuit court ordered "the portion of the [c]onfinement [t]ime not served ... added to the [e]xtended [s]upervision portion of the sentence."

¶5 The Department of Corrections released Hasselkus from prison on August 30, 2006, to serve a term of parole in case No. 1996CF359, and to serve consecutive terms of extended supervision in both case No. 2003CF1040, and the instant Milwaukee County case. On September 17, 2007, the Department of Administration, Division of Hearings and Appeals, revoked Hasselkus's community supervision in all three cases. Hasselkus returned to circuit court in Milwaukee County and Waukesha County for reconfinement hearings. The Milwaukee County circuit court ordered Hasselkus reconfined for a term of three months and eighteen days.

¶6 Hasselkus challenged the decision to revoke his extended supervision in the Milwaukee County matter by filing a petition for a writ of *certiorari* in the circuit court. The circuit court denied the petition, and this court affirmed. See *State v. Hasselkus*, No. 2008AP2896, unpublished slip op. (WI App Dec. 8, 2009) (*Hasselkus I*). Now before this court is Hasselkus's appeal from the orders of the Milwaukee County circuit court that imposed confinement for the 2005 conviction and that denied his motion for postdisposition relief.²

² Hasselkus also appealed from a reconfinement order entered by the Waukesha County circuit court in case No. 2003CF1040. We rejected his challenge in *State v. Hasselkus*, No. 2008AP1879-CR, unpublished slip op. (WI App May 6, 2009) (*Hasselkus II*).

DISCUSSION

¶7 Hasselkus asserts that the Milwaukee County circuit court improperly modified his sentence in 2006 to permit his early release from prison. According to Hasselkus, the terms of WIS. STAT. § 302.045(3m)(b) restrict the circuit court’s power to modify a bifurcated determinate sentence when the inmate completes the challenge incarceration program while serving consecutive terms of confinement. Hasselkus therefore believes that the circuit court should not have entered the August 16, 2006 order modifying his sentence in this case. He argues: “[Hasselkus’s] release to e[xtended] s[upervision] was unlawful in the first instance, rendering any subsequent revocation thereof a legal nullity.”³

¶8 Hasselkus’s arguments, no matter how artfully they may be phrased, are at bottom a challenge to the revocation of his extended supervision.⁴ His arguments cannot be pursued in this reconfinement proceeding because review of the Department’s revocation decision is by petition for a writ of *certiorari*. See

³ The State asserts that “the gist of Hasselkus’[s] argument ... is that the revocation of his extended supervision ... was unlawful because at the time of the violations he was serving only his parole in the 1996 Waukesha County case.” The State further asserts that Hasselkus made this argument in *Hasselkus II* when he appealed from the reconfinement order imposed by the Waukesha County circuit court and that Hasselkus is now barred by the doctrines of issue preclusion and claim preclusion from raising the argument again in this proceeding. Although the State accurately describes the argument that Hasselkus presented in *Hasselkus II*, we agree with Hasselkus that the State misconstrues his position in the instant appeal. Therefore, we do not adopt the analysis proposed by the State.

⁴ For the first time on appeal, Hasselkus asserts that the reconfinement proceeding itself was “a legal nullity.” Hasselkus did not make this claim in the circuit court. In his postdisposition motion, he argued that the circuit court lacked authority to modify his sentence in 2006, and that his release to extended supervision “and subsequent revocation thereof” violated his constitutional rights. “Generally, arguments raised for the first time on appeal are deemed waived.” *Kolupar v. Wilde Pontiac Cadillac, Inc.*, 2007 WI 98, ¶23, 303 Wis. 2d 258, 735 N.W.2d 93. We apply that rule here and decline to address any suggestion that the reconfinement hearing was a “nullity.”

WIS. STAT. § 302.113(9)(g); *see also State v. Swiams*, 2004 WI App 217, ¶6 n.6, 277 Wis. 2d 400, 690 N.W.2d 452.

¶9 Moreover, Hasselkus had an opportunity to pursue review of the revocation decision in *Hasselkus I*. A matter previously litigated may not be relitigated in a second postconviction proceeding. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

