

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 2012

Diane M. Fremgen
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. 2011AP1967-CR

Cir. Ct. No. 1991CF912153

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRIS LAMAR CRITTENDON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KEVIN E. MARTENS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Chris Lamar Crittendon, *pro se*, appeals from an order denying his motion to modify his sentence. The issues are whether Crittendon's claim that the circuit court considered incorrect information at

sentencing is procedurally barred and whether he is entitled to discretionary reversal under WIS. STAT. § 752.35 (2009-10).¹ We affirm.

¶2 After a jury trial, Crittendon was convicted of first-degree intentional homicide, as party to a crime. Since 1993, Crittendon has filed five postconviction challenges to his conviction, including a direct appeal. In a motion filed in 2009, Crittendon argued that the circuit court relied on inaccurate information when sentencing him because the circuit court stated that he was on probation when he murdered the victim when, in fact, he had been released on bail. The circuit court denied the motion, concluding that the claim was barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We affirmed the order. In May 2011, Crittendon filed another motion to modify his sentence, this time recasting his argument about the probation/bail discrepancy as a “new factor” claim. The circuit court again concluded that the argument was barred by *Escalona-Naranjo* because Crittendon was “merely applying a new name to an old issue.” Crittendon appeals that order.

¶3 Any claim that could have been raised on direct appeal or in a previous WIS. STAT. § 974.06 postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion unless a sufficient reason is identified for not raising the claim earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185. Crittendon contends the procedural bar of *Escalona-Naranjo* does not apply to his claim because the circuit court has inherent authority to modify a sentence at any time based on a “new factor.” Crittendon argues that his motion was *not* brought

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

pursuant to § 974.06, and thus the bar of *Escalona-Naranjo* does not apply because that case is premised on the language of § 974.06. Crittendon's argument fails because a motion invoking the inherent authority of the circuit court is procedurally barred when the defendant merely presents the same claims that were rejected in prior postconviction proceedings. See *State v. Henley*, 2010 WI 97, ¶¶72-77, 328 Wis. 2d 544, 787 N.W.2d 350. Crittendon's claim is procedurally barred because he raised the same claim in his 2009 postconviction motion.

¶4 Crittendon next argues that he is entitled to discretionary reversal in the interest of justice under WIS. STAT. § 752.35 due to the circuit court's error at sentencing. The distinction between being released on probation and being released on bail is so minor as to be insignificant. There is no reason to believe the sentence would have been any different had the circuit court known Crittendon was released on bail. Crittendon is not entitled to relief in the interest of justice based on this error.

By the Court.—Order affirmed.

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

