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DISTRICT II

February 4, 2026

To:

Hon. Timothy D. Boyle
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Timothy Kosterman, #579191
Redgranite Correctional Institution
P.O. Box 925
Redgranite, WI 54970-0925

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

2025AP35

State of Wisconsin v. Timothy Kosterman (L.C. #2010CF1033)

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

Timothy Kosterman, pro se, appeals from a December 12, 2023 order denying his motion for reconsideration. At issue is our jurisdiction. 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 (2023-24).¹ Because Kosterman does not raise any new issues in his motion for reconsideration, we lack jurisdiction. Accordingly, we dismiss his appeal.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

As background, on August 19, 2011, a jury found Kosterman guilty of two counts of first-degree sexual assault by use of a dangerous weapon contrary to WIS. STAT. § 940.225(1)(b); one count of burglary with intent to commit a felony while armed with a dangerous weapon contrary to WIS. STAT. § 943.10(2)(a) and, one count of misdemeanor theft contrary to WIS. STAT. §§ 943.20(l)(a) and (3)(a) and 939.51(3)(a). The circuit court entered judgment on the jury verdict and imposed a bifurcated prison sentence for the felonies and a jail sentence for the misdemeanor. Kosterman filed a direct appeal and, in a decision issued on April 24, 2013, this court affirmed his conviction. The Wisconsin Supreme Court denied Kosterman's petition for review.

On January 27, 2023, Kosterman filed a postconviction motion under WIS. STAT. § 974.06. Kosterman argued that he was entitled to a *Machner*² hearing and summarized his ineffective assistance of counsel claim in ten bullet points. After thoroughly addressing all of Kosterman's claims, the circuit court denied Kosterman's motion in a March 30, 2023 order. The court found that Kosterman's motion failed to allege sufficient material and nonconclusory facts, and that the record conclusively shows that counsel was not ineffective. *See State v. Ruffin*, 2022 WI 34, ¶28, 401 Wis.2d 619, 974 N.W.2d 432 (“If the motion does not raise facts sufficient to entitle the defendant to relief, or if it presents only conclusory allegations, or if the

² See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905, 908-09 (Ct. App. 1979). A defendant is only entitled to a *Machner* hearing if he “provide[s] sufficient material facts—*e.g.*, who, what, where, when, why, and how—that, if true, would entitle him to the relief he seeks.” *State v. Allen*, 2004 WI 106, ¶36, 274 Wis. 2d 568, 682 N.W.2d 433. The Wisconsin Supreme Court recently reiterated the requirements of the *Allen* rule in *State v. Ruffin*: “If the motion does not raise facts sufficient to entitle the defendant to relief, or if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.” 2022 WI 34, ¶28, 401 Wis. 2d 619, 974 N.W.2d 432.

record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.”).

Kosterman did not appeal the March 30, 2023 order of the circuit court.³ Instead, on June 1, 2023, Kosterman filed a motion for reconsideration of the March 30, 2023 order. In a December 12, 2024 order, the circuit court denied the motion without a hearing⁴ “[f]or the same reasons stated in the prior [o]rder Mr. Kosterman merely reiterates that which was contained in his prior motion.”

Subsequently, on January 6, 2025, Kosterman filed a pro se notice of appeal indicating he was appealing the December 12, 2024 order. 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. *See Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). This rule prevents a motion for reconsideration from being improperly 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, 24-26, 197 N.W.2d 752 (1972).

³ We note that if Kosterman had timely appealed this order “[t]here would be no need for this court to address whether the reconsideration decision is appealable.” *See Kraemer v. Traun*, 2025 WI App 8, ¶43, 415 Wis. 2d 125, 17 N.W.3d 49. An appeal from the March 30, 2023 final order would be untimely because the notice of appeal was not filed within 90 days. *See* WIS. STAT. § 808.04(1) (requiring a notice of appeal to be filed within 90 days if no notice of entry of order or judgment is given).

⁴ Initially the circuit court denied Kosterman’s June 1, 2023 motion for reconsideration in a June 7, 2023 order finding that Kosterman was “merely reiterat[ing] that which was contained in his prior [March 30, 2023] motion.” On November 21, 2024, Kosterman filed a motion to vacate the June 7, 2023 order denying reconsideration, claiming he did not receive notice of entry of the June 7, 2023 order. On December 12, 2024, the court granted Kosterman’s motion to vacate the June 7, 2023 order finding that it was “unclear” whether the order was sent to Kosterman. It further denied Kosterman’s June 1, 2023 motion for reconsideration “for the same reasons stated in the [c]ourt’s prior [o]rder of March 30, 2023[, because] Mr. Kosterman merely reiterates that which was contained in his prior motion.”

Given the *Ver Hagen/Silverton* rule, see *Kraemer v. Traun*, 2025 WI App 8, ¶43, 415 Wis. 2d 125, 17 N.W.3d 49, we issued an order directing the parties to address as the first issue in their appellate briefs whether this court has jurisdiction to review some or all of the December 12, 2024 order. Specifically, we directed the parties to address whether the motion for reconsideration that was denied in the December 12, 2024 circuit court order presented the same issues as those decided in the March 30, 2023 court order from which reconsideration was sought.

To determine whether a new issue exists, we compare the issues raised in the motion for reconsideration with those disposed of in the original order. See *Harris v. Reivitz*, 142 Wis. 2d 82, 87, 417 N.W.2d 50 (Ct. App. 1987). In comparing Kosterman's January 27, 2023 motion with his subsequent June 1, 2023 motion, we agree with the circuit court that both motions present the same claims. Not only do they present the same claims, but Kosterman repeats his claims verbatim.⁵ We conclude that the motion for reconsideration did not raise any new issues that were not already disposed of by the original order and therefore, we lack jurisdiction and must dismiss the appeal.

Therefore,

IT IS ORDERED that the appeal is summarily dismissed for lack of jurisdiction. See WIS. STAT. RULE 809.21.

⁵ Though Kosterman's January 27, 2023 motion is considerably lengthier than his subsequent June 1, 2023 motion, the ten bullet points summarizing Kosterman's argument are identical in both motions. The difference in length is simply due to Kosterman extensively fleshing out his identical claims in the first motion in a way he did not do in the second.

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

*Samuel A. Christensen
Clerk of Court of Appeals*