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DISTRICT II

March 11, 2026

To:

Hon. Michael S. Gibbs
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

Desiree Bongers
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Jesse W. McComb #518018
Wisconsin Resource Center
P.O. Box 220
Winnebago, WI 54985-0220

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

2025AP1305-CR State of Wisconsin v. Jesse W. McComb (L. C. #2018CF487)

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

Jesse W. McComb appeals pro se from a circuit court order denying his motion to correct the judgment of conviction and motion for sentence modification. 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 For the following reasons, we affirm.

In July 2018, McComb stabbed two people with a knife outside of a bar after one of the two victims did not give him a cigarette upon his request. In November 2018, McComb pled

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

no contest to two counts of first-degree reckless injury. The circuit court sentenced him to ten years of initial confinement followed by eight years of extended supervision on each count, running consecutively.

In June 2025, McComb filed pro se a motion to correct the judgment of conviction and a motion requesting sentence modification. He claimed that the circuit court should remove the DNA surcharge from the judgment of conviction and that his two crimes constituted a “continuous offense” that merited a concurrent sentence. The court treated McComb’s filing as a motion for sentence modification and denied it accordingly, finding that there were no new factors warranting a sentence modification, and furthermore refusing to remove the DNA surcharge.²

On appeal,³ McComb characterizes his brief as a motion for sentence modification, in which he challenges his sentence based on two claims of ineffective assistance of counsel, at trial and during postconviction proceedings; and a claim of circuit court error for its failure to impose a concurrent sentence for his two crimes, which he alleges should be considered a “continuous

² McComb’s pro se “Memorandum in Support of Motion for an Amended Judgment of Conviction” seemed to also allege ineffective assistance of counsel at trial. The circuit court did not address this in its order.

³ We note that McComb filed a letter on February 3, 2026, inquiring about the status of his appeal. We take no action on that letter.

offense.”⁴ Under this characterization, we affirm the court order, concluding that McComb introduces no new factors warranting sentence modification.

To prevail on a motion for sentence modification, McComb must demonstrate both the existence of a new factor by clear and convincing evidence and that the new factor justifies modification of the sentence. *See State v. Harbor*, 2011 WI 28, ¶36, 38, 333 Wis. 2d 53, 797 N.W.2d 828. A new factor is “a fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit] judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.” *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975). We review this issue de novo because “[w]hether the fact or set of facts put forth by the defendant constitutes a ‘new factor’ is a question of law.” *Harbor*, 333 Wis. 2d 53, ¶36.

⁴ McComb also makes a claim of circuit court error for its affirmance of the DNA surcharge on the judgment of conviction, alleging that he never raised this issue. We note that McComb’s June 2025 “Motion to Correct Judgment of Conviction” states that he “moves the court to correct the Judgment of Conviction (JOC) mandating a DNA surcharge ... and to issue a corrected judgment of conviction without the DNA surcharge.” The court’s order was in response to this motion. *See also State v. Cox*, 2018 WI 67, ¶25, 382 Wis. 2d 338, 913 N.W.2d 780 (concluding that courts may not waive the mandatory DNA surcharge required under WIS. STAT. § 973.046(1r)).

McComb alleges in his brief without citation to the Record that his postconviction counsel intended “to submit a no merit report.” The Record does not indicate an intent to file or the filing of a no-merit appeal. It is the appellant’s responsibility to ensure completion of the appellate record. *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381.

In his Reply brief, McComb claims that equitable tolling should apply to his case, without citing to relevant case law in support of his claim. He cites to *Holland v. Florida*, 560 U.S. 631 (2010), which pertains to the statute of limitations on petitions for federal habeas relief, and not to statutes related to Wisconsin postconviction court filings. Arguments unsupported by reference to relevant legal authority will not be considered on appeal. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

McComb has not pointed to any facts or set of facts that was not known to the circuit court at the time of his sentencing. Instead, under the prevailing facts, McComb offers a different legal theory—“continuous offense”—to argue that his sentence should run concurrently rather than consecutively. “[R]echaracterization or reweighing of previously known facts is not a ‘new factor’ for sentence modification purposes.” *State v. Grindemann*, 2002 WI App 106, ¶25, 255 Wis. 2d 632, 648 N.W.2d 507. McComb also asserts that his sentence warrants modification because he received ineffective assistance of counsel during his trial and postconviction proceedings. But ineffective assistance of counsel is a mixed question of fact and law, which does not lend itself to the “new factor” analysis of sentence modification—it is not a fact or set of facts that lends itself to being a “new factor.” See *State v. Hailes*, 2023 WI App 29, ¶47, 408 Wis. 2d 465, 992 N.W.2d 835.

Despite the circuit court’s treatment of McComb’s June 2025 “Memorandum in Support of Motion for an Amended Judgment of Conviction” as a motion for sentence modification, the State argues that we should treat McComb’s appeal as a motion for relief pursuant to WIS. STAT. § 974.06, which McComb insists it is not. Yet, McComb’s claims of ineffective assistance of counsel and court error fit squarely within the § 974.06 framework. The statute allows “a prisoner in custody under sentence of a court” to bring an appeal of his sentence “[a]fter the time for appeal or postconviction remedy provided in [WIS. STAT. §] 974.02 has expired[.]” Sec. 974.06(1).

[T]he purpose of § 974.06 is to consolidate *all claims of error* into one motion or appeal, claims that could have been raised in the defendants’ direct appeal or in a previous § 974.06 motion are barred from being raised in a subsequent § 974.06 motion absent a showing of a sufficient reason why the claims were not raised [before].

State v. Balliette, 2011 WI 79, ¶36, 336 Wis. 2d 358, 805 N.W.2d 334 (emphasis added). Under the characterization that McComb’s filing is a § 974.06 motion, we need not address the merits of McComb’s claims because we conclude that his claims are procedurally barred. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 173, 517 N.W.2d 157 (1994). “Whether a defendant’s appeal is procedurally barred is a question of law that we review *de novo*.”⁵ *State ex rel. Washington v. State*, 2012 WI App 74, ¶27, 343 Wis. 2d 434, 819 N.W.2d 305.

A motion for relief under WIS. STAT. § 974.06 must meet the requirements of subsection (4), which provides that “[a]ny ground finally adjudicated or not so raised ... may not be the basis for a subsequent motion, unless the [circuit] court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.” Sec. 974.06(4). Thus, the exception that would allow a new claim in such a motion is where the movant asserts a sufficient reason for the delay in bringing the claim. *Id.*

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. As an initial matter, “all grounds for relief ... must be raised in a petitioner’s original, supplemental, or amended motion.” *Id.* at 181. “[I]f the defendant did file a motion under [WIS. STAT.] § 974.02 or a direct appeal or a previous motion under [WIS. STAT.] § 974.06, the defendant is barred from making a claim that could have been raised previously unless he shows a sufficient reason for not

⁵ Prior to the motion at issue in this case, McComb also filed pro se multiple unsuccessful letters and motions seeking sentence modification, all arguing that his sentence should run concurrently rather than consecutively, under different theories, and none of which he appealed. His multiple attempts arguing for a concurrent sentence implicates another procedural bar: “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

making the claim earlier.” *State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668.

In December 2022, McComb filed a pro se letter to the circuit court claiming that he was unconscious when committing his crimes and does not remember having his *Miranda* rights recited to him, and requesting a new trial.⁶ The court construed McComb’s letter as a motion for relief pursuant to WIS. STAT. § 974.06, and denied it.⁷ McComb did not appeal. In that previous postconviction motion, he failed to make the claims he now brings forth in this appeal. *See Escalona-Naranjo*, 185 Wis. 2d at 181. McComb fails to state a sufficient reason for the delay in now bringing these claims. *See Romero-Georgana*, 360 Wis. 2d 522, ¶35. Thus, we conclude that these claims are procedurally barred. *See Escalona-Naranjo*, 185 Wis. 2d at 173.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

⁶ McComb prefaced his constitutional claim by stating that he was “trying to find cause for a sentence modification.”

⁷ The circuit court wrote, “[McComb’s] primary assertion in the letter was that he was unconscious and he doesn’t remember ever having his *Miranda* warnings read to him, and therefore is requesting a sentence modification or a new trial.” The court stated, “[t]his was an issue to be raised on appeal” and “[p]ostconviction procedure cannot be used as a substitute for appeal[.]” citing to *State v. Langston*, 53 Wis. 2d 228, 191 N.W.2d 713 (1971).

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

Samuel A. Christensen
Clerk of Court of Appeals