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DISTRICT I

March 31, 2026

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Robert Lee Hamilton 149550
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P.O. Box 233
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You are hereby notified that the Court has entered the following opinion and order:

2024AP867

State of Wisconsin v. Robert Lee Hamilton (L.C. # 1996CF966444)

Before White, C.J., Colón, P.J., and Geenen, J.

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).

Robert Lee Hamilton, pro se, appeals from an order of the circuit court that denied his motion for postconviction relief. 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 The order is summarily affirmed.

In 1996, Hamilton was charged with armed robbery with the threat of force, first-degree sexual assault, attempted first-degree intentional homicide while armed, first-degree recklessly

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

endangering safety while armed, and resisting an officer. An amended complaint added the habitual criminality (“repeater”) penalty enhancer, based on a prior theft conviction, to all charges. Hamilton pled guilty to the amended charges in exchange for the State’s agreement not to request a specific term of imprisonment. Hamilton received consecutive and concurrent sentences totaling 155 years’ imprisonment under the indeterminate sentencing scheme.

After his appellate rights were reinstated through a writ of habeas corpus, Hamilton moved to withdraw his plea in March 2013. He claimed that his plea was not knowingly entered because he did not understand the presumptive minimum penalty on two counts, the meaning of “utter disregard” as an element of first-degree recklessly endangering safety, or the maximum penalties because of ambiguities in the penalty enhancer discussion at the plea hearing. The circuit court denied relief, and we affirmed. *See State v. Hamilton*, No. 2013AP1425-CR, unpublished slip op. (WI App July 22, 2014).

On March 9, 2020, Hamilton filed a WIS. STAT. § 974.06 postconviction motion seeking plea withdrawal, resentencing, or an evidentiary hearing. Hamilton asserted, among other things, that postconviction counsel was ineffective for not challenging the repeater enhancer in the previous postconviction motion. As relevant here, “[t]he actor is a repeater if the actor was convicted of a felony during the 5-year period immediately preceding the commission of the crime” for which the actor is being sentenced. WIS. STAT. § 939.62(2) (1995-96). Hamilton insisted that the theft conviction on which the enhancer was based was not a felony, because only

\$129 had been taken.² The circuit court denied the motion with a written order on March 12, 2020. It determined that all of Hamilton's claims except the penalty enhancer claim were procedurally barred, either by actual litigation in the postconviction motion and appeal or by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The circuit court then rejected Hamilton's claim regarding the penalty enhancer, explaining that Hamilton had been convicted of felony theft from a person,³ not simple misdemeanor theft, so the enhancer was not improper.

On March 23, 2020, Hamilton filed an unsigned letter in the circuit court that stated, "I intend to appeal your order denying my § 974.06 motion 3/12/20 [but b]efore I do I need you to correct some errors that was made in your order denying my § 974.06." He asked the circuit court to "reconsider giving [him] a hearing" on the motion. The circuit court construed the letter as a motion for reconsideration and denied it a few days later.

Around the same time that Hamilton wrote his March 23 letter to the circuit court, he moved this court for an extension of time to appeal the circuit court's March 12 order. We denied the motion, explaining that we could not extend that particular deadline and informing Hamilton that his deadline for appealing the March 12 order was June 10, 2020. When Hamilton subsequently filed a notice of appeal on September 16, 2020, we dismissed the appeal for lack of

² Whoever takes and carries away moveable property of another without the other's consent and with the intent to deprive the owner permanently of possession of such property is guilty of a Class A misdemeanor if the value of the property does not exceed \$1,000. WIS. STAT. § 943.20(1)(a), (3)(a) (1995-96).

³ Whoever takes and carries away moveable property of another without the other's consent and with the intent to deprive the owner permanently of possession of such property is guilty of a Class D felony if the value of the property does not exceed \$2,500 *and the property is taken from the person of another*. WIS. STAT. § 943.20(1)(a), (3)(d)2. (1995-96).

jurisdiction. *See State v. Hamilton (Hamilton II)*, No. 2020AP1564, unpublished op. and order (WI App Oct. 8, 2020); *see also* WIS. STAT. RULE 809.10(1)(e) (“The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.”).

In November 2020, Hamilton filed a motion to vacate or modify his sentence. He claimed that: the circuit court at sentencing had relied upon inaccurate information about the classification of the prior conviction underlying the habitual criminality enhancer; the State failed to prove he was a repeat offender and his sentence was therefore unlawful; the inaccurate information was a new factor; and trial counsel had been ineffective for missing the inaccuracy. The circuit court denied the motion in February 2021, concluding the issues had all been previously litigated and were barred from relitigation by *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Hamilton’s motion for reconsideration was also denied. We affirmed on appeal. *See State v. Hamilton (Hamilton III)*, No. 2021AP366-CR, unpublished op. and order (WI App Sept. 20, 2022).

In March 2024, Hamilton filed the WIS. STAT. § 974.06 motion underlying this appeal. He alleged that the circuit court “denied [him] the opportunity to appeal” the March 12, 2020 order and argued that the circuit court should have liberally construed his unsigned March 23, 2020 letter as a notice of appeal. Hamilton also argued that this court had erred “by not allowing [him] to appeal” the March 12 order. He requested “a hearing on the habituals”; removal of the enhancers and restructuring his sentences to all run concurrent; or removal of the enhancers and corresponding commutation of the sentences. The circuit court denied the motion, unpersuaded that the March 23 letter was mishandled and concluding that Hamilton “was not deprived of his opportunity to appeal the March 12, 2020 order denying his § 974.06 motion, and therefore, his motion for postconviction relief on this basis is denied.” Hamilton appeals.

Hamilton's first argument on appeal is that when the circuit court decided, in the March 12, 2020 order, that all claims except the habitual criminality claim were procedurally barred, it should have held a hearing on the penalty enhancer issue. To the extent that Hamilton is attempting to relitigate the substance of his claim that the habitual offender enhancer was invalid, he is procedurally barred from raising the issue again. See *Witkowski*, 163 Wis. 2d at 990 ("A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue."). In any event, the circuit court correctly explained in the March 12 order that Hamilton's predicate offense was a felony. Because the record conclusively established that Hamilton was not entitled to relief on the claim, the decision whether to hold a hearing was discretionary, not mandatory. See *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Hamilton also argues that both the circuit court and this court erred by not treating his March 23 "original motion appealing the denial" as a notice of appeal. We are not persuaded that either court erred in its treatment of Hamilton's March 23 letter. Appellate procedure in some cases involves a notice of intent, see WIS. STAT. RULE 809.30(2)(b), which serves a different purpose than a notice of appeal, and parties are encouraged to seek reconsideration from the circuit court before appealing, see *Highland Manor Assocs. v. Bast*, 2003 WI 152, ¶17, 268 Wis. 2d 1, 672 N.W.2d 709; *Harris v. Reivitz*, 142 Wis. 2d 82, 89, 417 N.W.2d 50 (Ct. App. 1987). Thus, a letter containing a statement of an *intent* to appeal and a request that the circuit court reconsider its ruling, does not automatically present as an intended notice of appeal.⁴ As

⁴ We also note that the letter itself was unsigned, which constitutes a defect, albeit curable, in a notice of appeal. See *Rabideau v. Stiller*, 2006 WI App 155, ¶12, 295 Wis. 2d 417, 720 N.W.2d 108; see also *State v. Seay*, 2002 WI App 37, ¶8, 250 Wis. 2d 761, 641 N.W.2d 437.

the circuit court explained, “[a]t most, [Hamilton] expressed his intent to appeal the court’s decision but qualified that intent” by asking the court to “correct some errors,” and Hamilton did not object at the time to treatment of his letter as a motion for reconsideration. The circuit court also observed that, if Hamilton thought his March 23 letter was a notice of appeal, he would have had no reason to concurrently move this court for a filing extension.

The circuit court also considered whether it should vacate and reissue the March 12 order under WIS. STAT. § 806.07, which would have the effect of extending the time to appeal. *See Edland v. Wisconsin Physicians Serv. Ins. Corp.*, 210 Wis. 2d 638, 643, 563 N.W.2d 519 (1997). Under appropriate circumstances, when a party is unaware of the entry of an order or judgment because of a mistake committed by the circuit court, a circuit court may, in the exercise of its discretion, vacate and reinstate the order or judgment under WIS. STAT. § 806.07(1)(a) or (h).⁵ *See Arents v. ANR Pipeline Co.*, 2005 WI App 61, ¶73, 281 Wis. 2d 173, 696 N.W.2d 194.

Here, the circuit court concluded that using WIS. STAT. § 806.07 would be inappropriate; Hamilton did not claim to be unaware of the March 12 order, he just thought his March 23 letter should have been considered the notice of appeal. Further, a motion under § 806.07 must be “made within a reasonable time,” § 806.07(2), and the circuit court noted that Hamilton did not raise any concerns about the treatment of his letter until more than three years after his untimely appeal in *Hamilton II* was dismissed. We agree with the circuit court.

Upon the foregoing, therefore,

⁵ On motion and upon such terms as are just, the court may relieve a party from an order due to “[m]istake, inadvertence, surprise, or excusable neglect” or “[a]ny other reasons justifying relief from the operation of the judgment.” WIS. STAT. § 806.07(1)(a), (h).

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

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

Samuel A. Christensen
Clerk of Court of Appeals