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**DISTRICT III**

September 22, 2026

To:

Hon. Carrie A. Schneider  
Circuit Court Judge  
Electronic Notice

Aaron R. O'Neil  
Electronic Notice

Barb Bocik  
Clerk of Circuit Court  
Outagamie County Courthouse  
Electronic Notice

Demetrus Pickens 556693  
Racine Correctional Institution  
2019 Wisconsin St.  
Sturtevant, WI 53177-1829

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

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2025AP1255

State of Wisconsin v. Demetrus Pickens (L. C. No. 2018CF147)

Before Stark, P.J., Hruz, and Gill, 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).**

Demetrus Pickens, pro se, appeals from an order that denied his motion for reconsideration of a prior order denying him relief from a criminal judgment of conviction entered in 2019. 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).<sup>1</sup> We affirm on the basis that the issues raised in the reconsideration motion are procedurally barred.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

A matter already litigated cannot be relitigated in subsequent postconviction proceedings, “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). Additionally, no claim that could have been raised in a previously filed postconviction motion or direct appeal can be the basis for a subsequent Wis. STAT. § 974.06 motion unless the court finds there was a sufficient reason for failing to raise the claim in the earlier proceeding. Sec. 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). A defendant who asserts that postconviction or appellate counsel was ineffective for raising the wrong issues must show that the nonraised issue was “clearly stronger” than the issues counsel did present. *State v. Romero-Georgana*, 2014 WI 83, ¶¶45-46, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a defendant is procedurally barred from filing a successive postconviction motion is a question of law subject to de novo review. *Id.*, ¶30.

Pickens was convicted in 2019 of attempted first-degree intentional homicide, attempted first-degree intentional homicide as party to a crime, and possession of a firearm by a felon. The charges arose out of an incident in which Pickens brandished a firearm—which weapon a codefendant subsequently discharged—during a confrontation at a bar with another man called Tony.<sup>2</sup> Appointed counsel filed a postconviction motion and an appeal on Pickens’ behalf, arguing that Pickens’ trial counsel was ineffective for failing to object to testimony from law enforcement officers about the truthfulness of Pickens and another witness. In 2023, this court affirmed the conviction and postconviction order on direct appeal.

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<sup>2</sup> This matter involves the victim of a crime. Pursuant to WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

In June 2024, Pickens filed a pro se postconviction motion seeking to overturn counts one and two of his conviction on the following grounds: (1) insufficient evidence, prosecutorial misconduct, and a due process violation, based on the prosecutor's failure to produce Tony to testify subject to cross-examination; and (2) newly discovered evidence that rendered the verdict "no' longer equitable," based upon a posttrial letter from the district attorney informing Pickens that Tony had been convicted as the defendant in a separate but related case in which Pickens was identified as a victim. The circuit court determined that the claims were procedurally barred under *Escalona-Naranjo* because Pickens had no adequate reason for failing to bring them earlier, and it denied the motion on November 21, 2024.

Pickens did not appeal the November 21 decision within 90 days. Instead, on January 3, 2025, Pickens filed a motion for reconsideration, arguing that *Escalona-Naranjo* did not apply because he had filed his pro se postconviction motion under WIS. STAT. § 805.14, rather than under WIS. STAT. § 974.06. Alternatively, Pickens asserted that the ineffective assistance of his postconviction and appellate counsel provided a sufficient reason why he had not raised the issues in his pro se postconviction motion, in his original postconviction motion, and in his appeal by counsel.

The circuit court denied the motion for reconsideration, explaining that WIS. STAT. § 805.14 applies only to civil cases, not criminal cases, and that Pickens' motion was properly characterized as seeking relief under WIS. STAT. § 974.06. The court further found that Pickens' postconviction and appellate counsel had not provided ineffective assistance because the issues Pickens sought to raise were not viable, much less "clearly stronger" than the claims counsel had previously raised.

Pickens now appeals the order denying reconsideration. He claims that he was denied due process by not being able to confront Tony at trial; that his trial counsel was ineffective for failing to call Tony; that the circuit court should have compelled Tony's testimony; that there was insufficient evidence to support the verdict without Tony's testimony; and that this court should grant discretionary reversal.<sup>3</sup> He again asserts that the reason he failed to raise these claims earlier was due to the ineffective assistance of postconviction and appellate counsel.

As a threshold matter, it is questionable whether this court has jurisdiction over the reconsideration order because Pickens' reconsideration motion raised essentially the same issues that were already decided in the circuit court's November 21 order. See *Silverton Enters., Inc. v. General Cas. Co. of Wis.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). Even assuming, without deciding that we have jurisdiction, we conclude that the circuit court properly determined that Pickens' claims were procedurally barred.

First, the *Escalona-Naranjo* bar does apply because Pickens' postappeal, postconviction motion is properly characterized as being brought under WIS. STAT. § 974.06, after the exhaustion of Pickens' direct appeal rights under WIS. STAT. RULE 809.30. Courts are not bound by the labels on documents, and we must instead look to the documents' substance to properly construe them. *Town of Lincoln v. City of Whitehall*, 2019 WI 37, ¶33, 386 Wis. 2d 354, 925 N.W.2d 520.

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<sup>3</sup> Pickens also mistakenly asserts that his defense counsel failed to make a closing argument on his behalf. However, because that assertion is plainly contradicted by the record, we do not address it further.

Second, all of Pickens' claims were available when he filed his original postconviction motion and appeal. Pickens already knew by the time he filed the original postconviction motion that Tony had been convicted in another case, based on events that occurred on the same day as the events in this case, and that Tony had not testified at the trial in this case. He was also aware of what evidence had been produced at trial.

Third, Pickens did not allege facts that would establish ineffective assistance of postconviction and appellate counsel as a sufficient reason why he did not bring his claims earlier. Most significantly, Pickens did not provide an affidavit from Tony averring what testimony—if any<sup>4</sup>—he would have given if he had been called at trial. As a result, there is no basis to conclude that any potential testimony from Tony would have been favorable to Pickens, much less that it would have been likely to produce a different result at trial. That assessment is particularly so when surveillance video of the entire incident was produced at trial. The video evidence was plainly sufficient in and of itself to support the verdicts.

Finally, given Pickens' failure to identify any viable claim of error, and the overwhelming evidence of his guilt produced at trial, Pickens also has not persuaded this court that the interests of justice warrant exercising our discretionary reversal power.

Upon the foregoing,

IT IS ORDERED that the circuit court's order is summarily affirmed. WIS. STAT. RULE 809.21.

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<sup>4</sup> Given that Tony was facing his own charges, there is a reasonable probability that he would have asserted his Fifth Amendment rights and could not have been compelled to testify, even if he had been subpoenaed.

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*