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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 20, 2026

To:

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

2023AP729 State of Wisconsin v. Antonio L. Simmons (L.C. # 2000CF3635)

Before Donald, C.J., Colón, P.J., and Petrashek, 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).

Antonio L. Simmons appeals from the order denying his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2023-24),[1] and the order denying his motion for reconsideration. 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. We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version. Past versions of the statutes were in effect for various proceedings in this matter; however, any statutory provisions cited in this opinion where a previous version was in effect are the same as the current version.

Simmons was convicted in February 2001 of two counts of first-degree recklessly endangering safety using a dangerous weapon and one count of second-degree recklessly endangering safety using a dangerous weapon. These charges stemmed from a shooting incident where Simmons shot into another car while stopped at an intersection, wounding two people. Shortly before the shooting, Simmons was involved in an altercation with one of the victims at a nearby tavern, where that victim hit Simmons over the head with a bottle. A jury convicted Simmons of the charges, and he was sentenced to twenty-six years of initial confinement followed by thirteen years of extended supervision.

Simmons filed a postconviction motion seeking a new trial based on newly discovered evidence.[2] He submitted affidavits from two alleged witnesses, who had not testified at trial, claiming they saw Simmons get into a different vehicle after leaving the tavern. The circuit court denied the motion, stating those affidavits did not establish a reasonable probability there would be a different outcome at a new trial. The court pointed out that Simmons' friend had testified at trial that he had driven Simmons to a hospital after the altercation in a different vehicle than the one involved in the shooting, a version of events rejected by the jury. Furthermore, the court cited the "completely overwhelming" evidence against Simmons: his "strong motive" for the shooting after being hit with the bottle during the bar fight; and the testimony of four people—the two victims, another occupant of the vehicle, and an employee of

[2] Simmons' postconviction motion also sought sentence modification, in the alternative, on grounds that his sentences were excessive. He claimed that the circuit court improperly increased the terms of his sentences based on an affidavit he submitted from his girlfriend, Zakea Jones, claiming responsibility for the shootings. At sentencing, the court commented that the affidavit was likely the result of Jones being manipulated by Simmons. The court denied the request for sentence modification, citing clear support in the record that appropriate sentencing factors were considered.

the tavern—who all identified Simmons as the shooter. In fact, one of the victims testified that Simmons had circled back in his vehicle after the shooting and shouted "that's how I do it!"

Simmons appealed, and this court affirmed. *See* ***State v. Simmons***, Nos. 2003AP1455-CR and 2003AP1456-CR, unpublished slip op. (WI App July 30, 2004).[3] His petition for review was denied by our supreme court.

In December 2005, Simmons filed a pro se WIS. STAT. § 974.06 motion in which he raised eighteen claims of ineffective assistance of trial counsel and eleven claims of ineffective assistance of postconviction counsel. The circuit court rejected all of the claims, finding that the claims directly relating to trial counsel were procedurally barred since they were not raised in his direct appeal, and that the claims regarding postconviction counsel were "extremely conclusory." Simmons also raised another claim of newly discovered evidence, submitting affidavits from four additional witnesses who stated they saw him get into a different vehicle on the night of the shooting. The court rejected that claim as well, on the same grounds as the newly discovered evidence claim from his direct appeal—that there was not a reasonable probability of a different outcome at a new trial. The court therefore denied the § 974.06 motion. Simmons appealed from that order, and this court affirmed. *See* ***State v. Simmons***, No. 2006AP731, unpublished slip op. (WI App Mar. 13, 2007). His petition for review was again denied.

In March 2017, Simmons, by counsel, filed a postconviction motion pursuant to WIS. STAT. § 974.07. He sought DNA testing on several items recovered at the shooting scene,

[3] In addition to his convictions underlying this case, Simmons also appealed from his judgment of conviction in a consolidated case for being a felon in possession of a firearm.

including bullet casings, a baseball cap, a head wrap, shoes, and partially consumed bottles of alcohol. The circuit court denied the motion, noting that no "exculpatory evidence could actually be derived" from such testing that would make it less likely that Simmons was the shooter. With regard to the bullet casings in particular, the court observed that the presence of other DNA on the casings "might suggest that someone other than [Simmons] loaded the weapon, but … it would not exonerate him as the shooter. Anyone who handled the gun—which has never been located—could have loaded the weapon, and [Simmons] still could have been the one who fired it." The court further noted "it certainly would not have discredited the statements of *multiple* witnesses." It therefore found there was not a reasonable probability of a different outcome at a new trial.

Simmons appealed, and this court affirmed. *See* ***State v. Simmons***, No. 2018AP591-CR, unpublished slip op. (WI App July 21, 2020). Once again, his petition for review was denied.

Simmons then filed the WIS. STAT. § 974.06 motion underlying this appeal in September 2022.[4] He asserted ***Brady***[5] violations regarding alleged DNA test results relating to the items for which he sought testing in his WIS. STAT. § 974.07 motion filed in 2017. However, the State observed that letters from the crime lab submitted by Simmons showed that the lab never tested these items, and that a ***Brady*** violation cannot flow from evidence that was never in the State's

[4] In the interim, Simmons filed a petition for a writ of habeas corpus in November 2021 with the circuit court that was dismissed for failing to properly serve the respondent, as well as for failing to meet all of the requirements for habeas relief. Simmons also previously filed a habeas petition in the United States District Court for the Eastern District of Wisconsin in 2007, which was denied.

[5] *See* ***Brady v. Maryland***, 373 U.S. 83 (1963).

possession. The circuit court agreed, further noting its previous finding that DNA testing of those items would have provided "no useful exculpatory evidence."

Simmons' current motion also raised allegations of fabricating evidence against one of the investigating detectives, Kevin Armbruster. These allegations involve other bullet casings discovered near Simmons' car—found abandoned several blocks away after the shooting—that were a different caliber than those used in the shooting. The circuit court found the fabrication allegations to be "unsupported, undeveloped, [and] misleading[.]"

Ultimately, the circuit court denied Simmons' motion as procedurally barred. This appeal follows.

We agree that Simmons' claims in his current motion are procedurally barred. The claims appear to revolve around the items from the shooting scene for which he sought DNA testing in his 2017 postconviction motion. Claims that were litigated in a previous postconviction motion may be not be raised again in a WIS. STAT. § 974.06 motion. ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) ("A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.").

Moreover, to the extent that any of Simmons' current claims were not previously litigated, he fails to demonstrate a "sufficient reason" that these claims were not raised in a prior motion or in his direct appeal. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Whether a WIS. STAT. § 974.06 motion alleges "a sufficient reason for failing to bring available claims earlier" is a question of law that we review de novo. ***State v. Romero-Georgana***, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Simmons' claims reflect an awareness of these issues at the time he filed his previous postconviction motions, which impedes his ability to demonstrate a sufficient reason for failing to raise them earlier. In particular, Simmons' claim that Detective Armbruster fabricated evidence relating to the bullet casings discovered near Simmons' abandoned vehicle demonstrates this failure. Simmons seems to assert that this is newly discovered evidence, based on a 2017 Seventh Circuit case where evidence was challenged in a case involving Detective Armbruster. A newly-discovered evidence claim "must show sufficient objective material factual assertions that, if true, would warrant the movant to relief," in order to allow the reviewing court to "meaningfully assess" the claim. ***State v. Love***, 2005 WI 116, ¶¶47, 50, 284 Wis. 2d 111, 700 N.W.2d 62.

Simmons fails to explain how the bullet casings found blocks from the shooting, from a different caliber gun, are material evidence in this case. *See* ***id.*** Rather, he presents a convoluted argument that those casings "support" his speculative allegations of evidence fabrication against Detective Armbruster. This argument does not establish a reasonable probability of a different outcome at a new trial. *See* ***State v. Coogan***, 154 Wis. 2d 387, 394-95, 453 N.W.2d 186 (Ct. App. 1990).

In any event, it appears that Simmons was aware of these bullet casings when he filed his prior postconviction motions. Simmons referenced Detective Armbruster in his 2017 motion when he "called into question the veracity" of the detective's testimony, *see* ***Simmons***, No. 2018AP591-CR, ¶32 n.7, but he did not raise a claim of evidence fabrication. Other than a tenuous and unsupported connection to the Seventh Circuit case, Simmons fails to provide a sufficient reason for not bringing this claim previously. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185-86.

Simmons' "conflict of interest" claim against his trial counsel similarly fails. Simmons alleges that counsel failed to request discovery because he did not want to "piss off" the prosecutor due to their friendship. This claim appears to allege ineffective assistance by trial counsel, but was never raised in previous motions where Simmons raised other such claims. Simmons does not provide any reason—let alone a sufficient reason—for failing to previously raise this claim. *See* ***id.*** Moreover, Simmons fails to demonstrate a reasonable probability that any alleged errors attributed to counsel would have affected the outcome of his trial, and therefore he has not established prejudice under ***Strickland v. Washington***, 466 U.S. 668, 694 (1984).

In fact, despite filing a voluminous number of exhibits and appendices with his motion, Simmons fails to provide a factual basis for his claims, presenting only conclusory and speculative allegations. Indeed, his request for an evidentiary hearing seems to be a "fishing expedition," seeking facts to support those allegations. *See* ***State v. Balliette***, 2011 WI 79, ¶68, 336 Wis. 2d 358, 805 N.W.2d 334. This is not permitted. ***Id.***

Finally, we address Simmons' argument that the circuit court improperly adopted the State's brief in its order denying his motion. We reject this claim. "A circuit court is not prohibited from adopting the brief of one of the parties as its decision in the case," although it is "required to indicate the factors on which it relied when making its decision and state those on the record." ***State v. Lock***, 2013 WI App 80, ¶10, 348 Wis. 2d 334, 833 N.W.2d 189.

The circuit court did so here. In its order denying Simmons' motion for reconsideration, the court explained that it "did not merely incorporate the State's response brief" but rather "explained its reasoning for applying the procedural bar of ***Escalona-Naranjo***," which "was not

a complicated determination and did not require an in-depth analysis" to address all of Simmons' "spaghetti at the wall" claims. The court's explanation is quite sufficient.

In short, Simmons' claims are procedurally barred. Accordingly, we affirm the orders denying his WIS. STAT. § 974.06 motion and his motion for reconsideration.

Therefore,

IT IS ORDERED that the orders are 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