COURT OF APPEALS
DECISION
DATED AND FILED

June 6, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP730 **Cir. Ct. No. 1978CF2153**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY LEE HARRIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DANIEL L. KONKOL, Judge. *Dismissed*.

Before Brennan, P.J., Brash and Dugan, JJ.

¶1 PER CURIAM. Jeffrey Lee Harris, *pro se*, appeals an order denying his motion to reconsider an adverse circuit court decision. We conclude that the reconsideration motion raised the same issues as those resolved in the

original decision and therefore is not separately appealable. Accordingly, we dismiss the appeal.

BACKGROUND

¶2 In 1978, a jury found Harris guilty as a party to the crimes of first-degree murder and attempted armed robbery. Both charges arose from the death of a liquor store owner who was shot in May 1976 during an attempted armed robbery at the store. Harris subsequently pursued a multitude of postconviction motions, appeals, and writs. We have repeatedly denied his claims. *See* ***Harris v. State*** (***Harris I***), No. 1978AP623-CR, unpublished slip op. (WI App Mar. 29, 1979); ***State v. Harris*** (***Harris II***), No. 1987AP1918, unpublished slip op. (WI App June 28, 1988); ***State v. Harris*** (***Harris III***), Nos. 1994AP2001/2002, unpublished slip op. (WI App Oct. 11, 1994); ***State v. Harris*** (***Harris IV***), No. 2000AP1164, unpublished op. and order (WI App June 7, 2001); ***State v. Harris*** (***Harris V***), Nos. 2000AP2380/2381, unpublished op. and order (WI App Dec. 26, 2001); ***State ex rel. Harris v. Kemper*** (***Harris VI***), No. 2015AP42-W, unpublished op. and order (WI App Apr. 13, 2015); and ***State v. Harris*** (***Harris VII***), No. 2015AP975, unpublished slip op. (WI App Feb. 9, 2016).

¶3 Matters addressed in ***Harris VII*** underlie the instant appeal. As our opinion in that case reflects, Harris appealed a circuit court order rejecting his April 2015 motion for a new trial. ***Id.***, ¶4. He claimed he had newly discovered evidence, his trial counsel and postconviction counsel were ineffective, and he was entitled to relief in the interest of justice. ***Id.*** We rejected his claims, including, as relevant here, his claim of newly discovered evidence from Herbert Shropshire,

one of Harris's codefendants.[1] That evidence, we explained, was contained in "a two-page, unsigned document entitled 'Investigation Memo' that purports to be a memo to 'File' from [Attorney] Byron Lichstein of the University of Wisconsin Law School's Remington Center." *See* ***id.***, ¶16 & n.4 (some formatting changed). The memo states that in 2013, Lichstein interviewed Shropshire, who recanted his trial testimony incriminating Harris. Shropshire instead offered a version of the crime exonerating Harris, and Shropshire affirmatively asserted Harris knew nothing about the liquor store robbery that Shropshire and a third person, Charles Hart, decided to commit. The memo goes on to describe Shropshire's story that Hart shot the store owner during the attempted robbery and ensuing struggle. *See* ***id.***, ¶18.

¶4 We reviewed the memo in light of the well-settled rule that recantations must be corroborated by other newly discovered evidence "and that requirement 'is met if: (1) there is a feasible motive for the initial false statement; and, (2) there are circumstantial guarantees of the trustworthiness of the recantation.'" ***Id.***, ¶17 (citation and one set of quotation marks omitted). Preliminarily, we observed that the memo was unsigned and that Harris did not provide a signed or notarized statement from Shropshire. More substantively, we determined:

> the story Shropshire told Lichstein is contradicted by both the testimony offered at trial by other witnesses and by the affidavits Harris has offered in support of his postconviction motion. For instance, Shropshire told Lichstein that Hart, 'pulled out a gun," but the 2014 affidavits from both Hart and Harris assert that none of the

[1] Shropshire testified at trial that he served as a lookout for the crimes at issue in this case and that the State charged him with third-degree murder and attempted armed robbery for his role in those crimes.

> three men entered the store with a gun and that the victim was killed with his own gun. Because the alleged recantation lacks "circumstantial guarantees of ... trustworthiness"—in addition to being presented as hearsay in an unsigned report—we reject Harris's argument that the trial court erroneously exercised its discretion when it declined to grant Harris a hearing or relief based on the memo.

Id., ¶18.

¶5 Approximately six weeks after we released ***Harris VII***, Harris filed a motion in circuit court seeking reconsideration of the order underlying our decision. In support, he submitted once again some of the documents he had previously submitted with the April 2015 motion. He also offered a one-page affidavit from Shropshire, notarized eleven days after the date of our opinion in ***Harris VII***. In the document, Shropshire confirmed that in 2013 he spoke to attorneys about Harris and the 1976 homicide. Shropshire went on to aver that he told the attorneys: Harris had nothing to do with the homicide; only Shropshire and Hart were involved in the homicide; no conspiracy existed to take money from the liquor store owner; and there were no plans to kill anyone in the liquor store. The circuit court denied the motion to reconsider on the ground that it merely reiterated the arguments put forth in the original motion, and Harris appeals.

DISCUSSION

¶6 There is no right to appeal an order denying a motion for reconsideration unless the motion raised issues that were not resolved by the order sought to be reconsidered. *See* ***Silverton Enters., Inc. v. General Cas. Co. of Wis.***, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). This limitation promotes the finality of judgments and prevents a party from artificially extending the time for appeal. *See* ***Ver Hagen v. Gibbons***, 55 Wis. 2d 21, 25-26, 197

N.W.2d 752 (1972). Whether a motion for reconsideration raised new issues is a question of law for our *de novo* review. *See* ***State v. Edwards***, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

¶7 Our review satisfies us that Harris's motion for reconsideration did not raise new issues. To the contrary, Harris presented the same facts and the same arguments that he presented to the circuit court in 2015. The only difference between the original motion and the motion for reconsideration was that, in the latter motion, Harris offered Shropshire's recantation not only in the form of an unsigned memo from Lichstein but also in the form of an affidavit from Shropshire.[2] This cumulative submission does not constitute a new issue.

¶8 First, the affidavit adds nothing to the original, more detailed information in the Lichstein memo and is merely a conclusory denial of Harris's involvement in the 1976 crimes that lacks factual substantiation as well as any feasible motive for the original trial testimony. Second, as we explained in ***Harris VII***: "[a] codefendant's testimony is not newly discovered evidence where the defendant was aware of the facts at the time of the trial but was unable to present the testimony of the codefendant regarding those facts because the codefendant refused to give that testimony." *See* ***id.***, slip op. ¶¶11-12 (discussing an affidavit

[2] In the appendix of the appellant's brief-in-chief in this appeal, Harris included a letter that purports to be from an associate clinical professor at the University of Wisconsin vouching for the authenticity of the unsigned Lichstein memo. We cannot consider the letter because it is not in the circuit court record. *See* ***State v. Parker***, 2002 WI App 159, ¶12, 256 Wis. 2d 154, 647 N.W.2d 430. Moreover, the letter would not assist Harris were we to consider it. We assumed the authenticity and accuracy of the Lichstein memo when we rejected it as a basis for a new trial in ***State v. Harris*** (***Harris VII***), No. 2015AP975, unpublished slip op. (WI App Feb. 9, 2016). *See* ***id.***, ¶¶17-18.

from codefendant Hart and explaining the difference between newly available evidence and newly discovered evidence).

¶9 In sum, Harris filed an appeal from an order denying a motion for reconsideration that did not raise new issues left unresolved by the order sought to be reconsidered.[3] Accordingly, we dismiss the appeal.

By the Court.—Appeal dismissed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. This opinion may not be cited except as provided under RULE 809.23(3).

[3] We observe that at some points in Harris's appellate briefs, he appears to seek reconsideration of our decision in ***Harris VII***. He cannot do so now. The deadline for a motion to reconsider a decision of the court of appeals lapses twenty days after our decision is released and cannot be enlarged. *See* WIS. STAT. RULES 809.24 (2015-16); 809.82(2)(e) (2015-16). The deadline to reconsider ***Harris VII*** thus lapsed on February 29, 2016, well before Harris filed his opening brief in the instant matter on May 27, 2016. Moreover, we remind Harris that he previously sought reconsideration of ***Harris VII***, and we denied the motion. *See* ***State v. Harris***, No. 2015AP975, unpublished ord. (WI App Mar. 2, 2016). No provision exists in the rules of appellate procedure allowing litigants to make multiple requests for reconsideration. All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.