

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2012

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP180

Cir. Ct. No. 1989CF890510

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. CHARLES ROGERS,

PETITIONER-APPELLANT,

V.

STATE OF WISCONSIN,

RESPONDENT-RESPONDENT.

APPEAL from orders of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Charles Rogers, *pro se*, appeals from circuit court orders denying his petition for a writ of *habeas corpus* and his related motion for reconsideration. The circuit court concluded that Rogers' claims were procedurally barred. We agree and affirm.

¶2 This is the tenth time that Rogers has sought appellate relief since his 1989 convictions for first-degree intentional homicide and battery while armed. See *State v. Rogers*, No. 1991AP2764-CRNM, unpublished slip op. (WI App Apr. 21, 1992) (*Rogers I*); *State ex rel. Rogers v. McCaughtry*, No. 1993AP1925-W, unpublished order (WI Aug. 17, 1993) (*Rogers II*); *State ex rel. Rogers v. McCaughtry*, No. 1996AP1818-W, unpublished slip op. (WI App July 5, 1996) (*Rogers III*); *State ex rel. Rogers v. McCaughtry*, No. 1997AP2263-W, unpublished slip op. (WI App Aug. 8, 1997) (*Rogers IV*); *State ex rel. Rogers v. Litscher*, No. 2001AP3132-W, unpublished slip op. (WI App Feb. 8, 2002) (*Rogers V*); *State v. Rogers*, No. 2003AP1448, unpublished slip op. (WI App Mar. 4, 2004) (*Rogers VI*); *State v. Rogers*, No. 2008AP720, unpublished slip op. (WI App Jan. 13, 2009) (*Rogers VII*); *State ex rel. Rogers v. Thurmer*, No. 2009AP1385-W, unpublished slip op. (WI App Oct. 6, 2009) (*Rogers VIII*); *State ex rel. Rogers v. Court of Appeals*, No. 2010AP483, unpublished order (WI Apr. 19, 2010) (*Rogers IX*).¹ We will not repeat the extensive recitation of facts or procedural history outlined in those decisions.

¶3 In *Rogers VIII*, we warned Rogers: “This case has been litigated repeatedly. We will not grant a petition for a writ to circumvent an appeal that has now become final, or to continue to re-litigate a matter that has been litigated at least six times.” *Rogers VIII*, No. 2009AP1385-W, unpublished slip op. at 2. Despite our warning, in the petition for a writ of *habeas corpus* that underlies this appeal, Rogers re-raised several claims that were previously decided or rejected,

¹ Although the State describes this as Rogers’ ninth appellate proceeding, it appears that this is actually Rogers’ tenth appellate proceeding. *Rogers IX*, No. 2010AP483, unpublished order (WI Apr. 19, 2010), relates to Rogers’ petition for a writ of mandamus which the Wisconsin Supreme Court denied *ex parte*.

including his claims of police misconduct, prosecutorial misconduct, ineffective assistance of trial counsel, and error in sending extraneous material to the jury.² Rogers contends that his claims are entitled to additional review because neither postconviction/appellate counsel nor this court properly discovered and addressed them in the context of his no-merit appeal and because of other inadequacies related to the no-merit proceeding.³

¶4 The State argues that Rogers’ claims are barred, and we agree.

[I]n a postconviction setting, a petition for [a] writ of *habeas corpus* will not be granted where (1) the petitioner asserts a claim that he or she could have raised during a

² In **Rogers VII**, we provided a chronology of Rogers’ postconviction actions, which included the following:

In 2003, Rogers filed a motion in the circuit court for postconviction relief pursuant to WIS. STAT. § 974.06 (2001-02). His claims *included ineffective assistance of trial counsel, prosecutorial misconduct, improper joinder of charges, and error in sending extrinsic materials to the jury room*. Rogers also claimed to have newly discovered evidence of police misconduct. The circuit court denied the motion in its entirety, and this court affirmed. *See State v. Rogers*, No. 2003AP1448, unpublished slip op. (WI App Mar. 4, 2004) (**Rogers VI**).

In 2008, Rogers filed the postconviction motion underlying the instant appeal. He again alleged that his constitutional rights were violated by instances of *prosecutorial misconduct, police misconduct, and ineffective assistance of his trial attorney*. Under the heading “judicial abuse of discretion,” he renewed his complaints that the circuit court violated his constitutional rights to due process and a fair trial by refusing to sever the two charges against him and *by allowing extrinsic materials into the jury room*.

Rogers VII, No. 2008AP720, unpublished slip op., ¶¶6-7 (WI App Jan. 13, 2009) (emphasis added). This excerpt makes clear that most—if not all—of Rogers’ present claims were previously raised by him.

³ Rogers appears to have offered many of the same reasons in **Rogers VII**. *See id.*, ¶¶12, 14.

prior appeal, but failed to do so, and offers no valid reason to excuse such failure, or (2) the petitioner asserts a claim that was previously litigated in a prior appeal or motion after verdict.

State v. Pozo, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12 (citations omitted).

¶5 Rogers may not use a petition for a writ of *habeas corpus* to relitigate the issues he previously raised. To the extent Rogers raises new issues, he offers no valid reason for why he failed to raise them previously. Accordingly, Rogers is barred from raising those issues in the instant collateral attack on his convictions.

¶6 The State requests that this court impose limitations on Rogers' right to commence further proceedings in this court. As noted, this appeal involves Rogers' tenth request for appellate relief. Rogers' repetitive litigation imposes an unnecessary burden on both the judicial system and the attorney who must address his motions.

¶7 Because Rogers has abused the judicial process by repetitively litigating the same matters, no further filings will be accepted from him unless his filings are accompanied by an affidavit including all of the following:

1. A copy of the circuit court's written decision and order he seeks to appeal,
2. A statement setting forth the specific grounds upon which this court can grant relief,
3. A statement showing how the issues sought to be raised differ from issues raised and previously adjudicated, and
4. A statement of why any new claims so raised are acceptable under [*State v.*] *Escalona-Naranjo*, 185 Wis. 2d [168,] 184-86[, 517 N.W.2d 157 (1994)].

See State v. Casteel, 2001 WI App 188, ¶25, 247 Wis. 2d 451, 634 N.W.2d 338 (footnote omitted). Upon review of these documents, if this court determines that Rogers states no claim, defense, or appeal upon which relief may be granted, we will refuse to accept the filing. *See id.*, ¶26.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

