

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 9, 1996

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

NOTICE

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

No. 95-2643

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JOHN H. SHOMO,

Defendant-Appellant.

APPEAL from an order of the circuit court for Langlade County:
ROBERT A. KENNEDY, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. John Shomo appeals an order denying his motion for sentence modification.¹ The trial court denied the motion, finding that it was

¹ The notice of appeal states that Shomo appeals from the order denying reconsideration of the order denying sentence modification. Because the notice of appeal was timely filed to review the underlying order, we construe the appeal to be from the order denying sentence modification.

"a mere rehash" of a previous postconviction motion and further concluding that the motion was inadequate and untimely, "it obviously being a § 974.06 motion." Shomo argues that the trial court mischaracterized his motion as a motion under § 974.06, STATS., and erred when it concluded the motion was not timely filed. We need not review all of the trial court's reasons for denying the motion because we conclude Shomo is barred from raising the same issues that were previously denied. See *State v. Baudhuin*, 141 Wis.2d 642, 648, 416 N.W.2d 60, 62 (1987).

After Shomo's initial postconviction motions were denied and the convictions were affirmed, Shomo filed a pro se motion to amend his sentence. The motion stated that it was based on a new factor, an abuse of trial court discretion at the original sentencing and misleading or inaccurate information presented at sentencing. The trial court denied that motion by order entered September 30, 1994. Shomo did not appeal that order. Rather, in June 1995, he filed a second pro se motion to modify his sentence raising the same issues. The trial court denied that motion by an order entered July 10, 1995, and subsequently denied reconsideration of the July 10 order.

Shomo is barred from raising on appeal any issue he could have raised had he appealed the September 30, 1994, order denying his motion to modify sentence. See *State ex rel. LeFebvre v. Israel*, 109 Wis.2d 337, 342, 325 N.W.2d 899, 901 (1982); *Nichols v. State*, 73 Wis.2d 90, 91, 241 N.W.2d 877, 878 (1976). A defendant may not repeatedly file nearly identical motions in the trial court and appeal the order of his choice based on perceived errors committed by the trial court in denying his repetitious motions.

By the Court. — Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.