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DISTRICT I

February 3, 2026

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Anne Christenson Murphy
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Dontre K. Johnson 259802
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1687 State of Wisconsin v. Dontre K. Johnson (L.C. # 2011CF97)

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

Dontre K. Johnson, pro se, appeals an order that denied his motion seeking a new trial on the ground that he had newly discovered evidence of a juror's misconduct. He also appeals the subsequent order that denied 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 (2023-24).[1] Because the circuit court correctly determined that Johnson's claims are procedurally barred, we summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

In 2011, a jury found Johnson guilty of two felony counts of repeated sexual assault of a child and one misdemeanor count of exposing genitals to a child. With the assistance of counsel, he filed a postconviction motion seeking relief as to all three counts. The circuit court vacated the misdemeanor conviction and otherwise denied the motion. Johnson appealed, raising a variety of claims related to his allegation that the charging period for the felonies deprived him of his due process right to adequate notice of the accusations against him. We affirmed. ***State v. Johnson*** (***Johnson I***), No. 2014AP997-CR, unpublished slip op. (WI App Apr. 7, 2015).

Johnson retained new counsel and moved for postconviction relief under WIS. STAT. § 974.06. He alleged that: Juror 22 was objectively biased, both because she failed to reveal during *voir dire* that she had been sexually assaulted as a child, and because, during the jury's deliberations, she disclosed information about that assault to her fellow jurors; his trial counsel was ineffective in selecting the jury; and his original postconviction counsel was ineffective for failing to raise these claims. The circuit court denied relief after conducting an evidentiary hearing. Johnson appealed. We affirmed the circuit court's order, and we also denied Johnson's request that this court grant him a new trial in the interest of justice. ***State v. Johnson*** (***Johnson II***), No. 2017AP1581, unpublished slip op., ¶2 (WI App Aug. 14, 2018).

Johnson, proceeding pro se, then filed a postconviction motion seeking sentence modification. The circuit court denied the claim, and Johnson appealed. He argued that the circuit court erroneously rejected his claim that an alleged new factor—his family's suffering due to his incarceration—warranted sentencing relief. He also argued again that he was entitled to a new trial in the interest of justice because Juror 22 provided extraneous information to the jury during its deliberations. We affirmed the circuit court's order denying sentence modification. We additionally rejected Johnson's request for a new trial, explaining that he had

previously asked this court for the same relief based on the same reason and could not relitigate his claim. ***State v. Johnson*** (***Johnson III***), No. 2022AP1294-CR, unpublished op. and order (WI App Aug. 1, 2023).

Johnson next filed the postconviction motion underlying this appeal. Pursuant to WIS. STAT. § 974.06, Johnson sought a new trial on the ground that he had newly discovered evidence, specifically, evidence developed in the proceedings underlying ***Johnson II*** that, during jury deliberations, Juror 22 revealed extraneous information about her own childhood assault. The circuit court concluded that Johnson's claim was procedurally barred. He appeals.

After the time for a direct appeal has passed, WIS. STAT. § 974.06 permits an imprisoned defendant to raise collateral challenges to his or her criminal convictions based on alleged jurisdictional or constitutional errors.[2] ***State v. Henley***, 2010 WI 97, ¶¶50, 52, 328 Wis. 2d 544, 787 N.W.2d 350. The statute includes a limitation, however, because "[w]e need finality in our litigation." ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Thus, § 974.06(4) provides:

> All grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent

[2] We note that Johnson's postconviction motion indicated that he raised his claims pursuant to the authority of not only WIS. STAT. § 974.06, but also WIS. STAT. § 805.15. Our supreme court has clarified, however, that § 805.15 is not the proper vehicle for a criminal defendant seeking a new trial. ***State v. Henley***, 2010 WI 97, ¶¶39, 65, 328 Wis. 2d 544, 787 N.W.2d 350; *see also* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, ¶16, 290 Wis. 2d 352, 714 N.W.2d 900 (explaining that WIS. STAT. § 974.06 is the statutory mechanism available to a criminal defendant who seeks to mount a collateral attack on a conviction).

> motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

Our supreme court has repeatedly emphasized that § 974.06(4) permits a convicted person to "raise an issue 'which for *sufficient reason*' was not raised or was inadequately raised in a prior motion," but the defendant has the burden to allege and show a "*sufficient reason* why a court should now entertain that same claim." ***State v. Aaron Allen***, 2010 WI 89, ¶26, 328 Wis. 2d 1, 786 N.W.2d 124 (citation omitted).

Johnson thus may not pursue claims under WIS. STAT. § 974.06 unless he "provides a sufficient reason for not raising or adequately raising them in the original, supplemental or amended motion." *See* ***State v. Casteel***, 2001 WI App 188, ¶24, 247 Wis. 2d 451, 634 N.W.2d 338. The proffer must be more than a conclusory assertion and must include allegations of "'sufficient material facts—*e.g.*, who, what, where, when, why, and how'" that demonstrate the sufficiency of his identified reason. ***State v. Romero-Georgana***, 2014 WI 83, ¶¶36-37, 360 Wis. 2d 522, 849 N.W.2d 668 (citation omitted). On appeal, our role is to assess the sufficiency of Johnson's reason for additional postconviction litigation, which we do by examining the four corners of his postconviction motion, not his appellate briefs. *See* ***id.***, ¶64; *see also* ***State v. John Allen***, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433. Whether Johnson presented a sufficient reason for serial litigation is a question of law that we consider de novo. *See* ***Romero-Georgana***, 360 Wis. 2d 522, ¶30.

Johnson asserted in his postconviction motion that he had a sufficient reason for his most recent postconviction motion because the issue he presented "was inadequately raised" previously. This was so, Johnson explained, because his claim regarding Juror 22 should have been framed as an allegation of newly discovered evidence rather than as a claim of juror bias.

Johnson's proposed reason for serial litigation fails as a matter of law. Johnson was required to offer a sufficient reason for inadequately raising his current issue previously. *See* ***Casteel***, 247 Wis. 2d 451, ¶24. Johnson may not rely on the circular proposition that his "sufficient reason" was his failure to present the issue adequately the first time. *See* ***State v. Kletzien***, 2011 WI App 22, ¶17, 331 Wis. 2d 640, 794 N.W.2d 920. Rather, he must proffer a sufficient reason for the earlier inadequate presentation before he may present the issue again. He failed to make that proffer. Accordingly, his claim is barred under WIS. STAT. § 974.06 and ***Escalona-Naranjo***.

Moreover, Johnson's claim is barred for the additional reason that he previously litigated it. "A matter once litigated may not be relitigated in a subsequent postconviction proceeding 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). Johnson's most recent postconviction motion, however, is at least his third collateral challenge to his convictions based on a theory that they are tainted by the involvement of Juror 22 and the extraneous information that Juror 22 allegedly introduced during deliberations. *See* ***Johnson III***, No. 2022AP1294-CR, at 5 (explaining that Johnson was seeking to raise the same challenge to Juror 22's "extraneous information" that he raised in ***Johnson II***).

Johnson asserts that his prior and current claims are different. He asserts that in ***Johnson II***, his attorney raised allegations regarding Juror 22 as a claim of juror bias; by contrast, Johnson's most recent postconviction motion raised allegations regarding Juror 22 as a claim of "new evidence of extraneous information" that was "presented to and presumably bias[ed] his trial jury." We reject Johnson's efforts to relitigate his claims about Juror 22's alleged bias and improper conduct by shoehorning them into the rubric of newly discovered

evidence. "[A] finally litigated ground for relief may not be relitigated every time a new legal theory is advanced[.]" ***Witkowski***, 163 Wis. 2d at 990. Accordingly, a litigant's efforts "to rephrase or re-theorize" a previously litigated claim are unavailing. ***Id.*** at 992. We caution Johnson to keep these long-settled rules in mind. We will not indefinitely tolerate a litigant's decision to squander limited judicial resources by repeatedly advancing the same claim. *See* ***Casteel***, 247 Wis. 2d 451, ¶25. For all the foregoing reasons, we affirm.

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