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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 II

March 25, 2026

To:

Hon. Tricia L. Walker
Circuit Court Judge
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Abigail Potts
Electronic Notice

Fairly W. Earls #369129
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2025AP434

State of Wisconsin v. Fairly W. Earls (L.C. #1997CF268)

Before Neubauer, P.J., Gundrum, and Grogan, JJ.

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).

Fairly W. Earls appeals pro se from an order denying his motion for postconviction relief. He seeks either sentence modification or a new trial. 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 We affirm.

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

Earls was convicted following a jury trial² of three counts of first-degree sexual assault of a child. He was accused of having sexual contact with a six-year-old girl several times in 1997. For his actions, the circuit court imposed consecutive sentences totaling 60 years in state prison.

This court affirmed Earls' convictions on direct appeal. *State v. Earls*, No. 2014AP57-CR, unpublished slip op. (WI App Apr. 8, 2015). In doing so, we rejected numerous claims on the merits³ as well as the circuit court's determination that Earls—who by then had chosen to represent himself—had forfeited his ineffective assistance of counsel claims by failing to procure his trial counsel's appearance at a *Machner*⁴ hearing.

In 2022, Earls filed a pro se motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he argued that (1) the evidence was insufficient to support his convictions; (2) his convictions violated the common-law corroboration rule; (3) he should have been charged with, and convicted of, repeated sexual assault of the same child rather than three individual offenses; and (4) he was entitled to sentence modification because he was given “Multiple Punishments in a Single Prosecution with the Same Statutory Elements.” The circuit court denied the claims, and we affirmed that decision. *State v. Earls*, No. 2022AP2143, unpublished op. and order (WI App May 1, 2024).

² The jury trial was a federally ordered retrial. We previously articulated the winding history of Earls' prosecution in *State v. Earls*, No. 2014AP57-CR, unpublished slip op. (WI App Apr. 8, 2015).

³ In particular, Earls had accused the circuit court of committing error by (1) admitting a redacted interview of the victim; (2) denying his motion to dismiss for loss of jurisdiction; (3) improperly commenting on trial testimony; (4) allowing testimony concerning his custodial status after his apprehension in another country; (5) permitting the victim to testify about a charge for which he was found not guilty at an earlier trial; and (6) admitting other acts evidence. Earls also complained about three witnesses improperly vouching for the victim's credibility.

⁴ See *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

In 2025, Earls filed another pro se motion for postconviction relief pursuant to WIS. STAT. § 974.06. Citing a decision by the Wisconsin Supreme Court in *State v. Rector*, 2023 WI 41, 407 Wis. 2d 321, 990 N.W.2d 213, Earls sought either sentence modification or a new trial. The circuit court denied Earls' motion without a hearing. This appeal follows.

On appeal, Earls renews the claims brought in his latest postconviction motion. He appears to believe that the *Rector* case impacted both the circuit court's ability to impose consecutive sentences in his case as well as the "counting rule" for admitting prior convictions at trial.⁵ See *State v. Smith*, 203 Wis. 2d 288, 297, 553 N.W.2d 824 (Ct. App. 1996). Earls describes the *Rector* case as a new factor warranting relief.

A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because ... it was unknowingly overlooked by all of the parties." *State v. Harbor*, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (quoting *Rosado v. State*, 70 Wis. 2d 280, 288, 234 N.W.2d 69 (1975)). Whether a fact or set of facts constitutes a new factor is a question of law that this court reviews independently. See *Harbor*, 333 Wis. 2d 53, ¶33.

Here, we are not persuaded that Earls has demonstrated the existence of a new factor. To begin, the *Rector* case had nothing to do with a circuit court's ability to impose consecutive sentences or the "counting rule" for admitting prior convictions at trial. Instead, it concerned a narrow question of statutory interpretation and whether a provision in Wisconsin's sex offender registration statute, which required lifetime registration for a person convicted of sex offenses on

⁵ In his trial testimony, Earls acknowledged having 14 prior convictions.

“2 or more separate occasions,” applied to a person convicted of multiple sex offenses in a single case. *Rector*, 407 Wis. 2d 321, ¶1. That question is not at issue in this case. Moreover, *Rector* was decided well after Earls’ conviction, so it cannot be described as highly relevant to the imposition of his sentence.

To the extent that Earls’ postconviction motion can be interpreted as raising other claims besides a new factor, we conclude they are procedurally barred by WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). That is because Earls has not established a sufficient reason for failing to raise them earlier. Accordingly, we are satisfied that the circuit court properly denied his motion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is 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