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DISTRICT I

June 8, 2026

To:

Hon. Jorge R. Fragoso
Circuit Court Judge
Electronic Notice

John W. Kellis
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Tyrone Davis Smith 297130
Fox Lake Correctional Institution
P.O. Box 200
W10237 Lake Emily Road
Fox Lake, WI 53933

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

2025AP61-CR	State of Wisconsin v. Tyrone Davis Smith (L.C. # 1993CF931935)
2025AP62-CR	State of Wisconsin v. Tyrone Davis Smith (L.C. # 1995CF950830)

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

Tyrone Davis Smith appeals from an order of the circuit court denying his motion for resentencing. 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 The order is summarily affirmed.

In 1995, a jury convicted Smith of one count of attempted first-degree intentional homicide while armed in Milwaukee County Circuit Court Case No. 1993CF931935. In

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

Milwaukee County Circuit Court Case No. 1995CF950830, Smith pled guilty to one count of bail jumping, stemming from a failure to appear for trial in the attempted homicide case. The circuit court held one sentencing hearing for both cases. The circuit court sentenced Smith to fifteen years' imprisonment for the attempted homicide conviction and to five years' imprisonment for the bail jumping conviction.

Smith moved for postconviction relief from the bail jumping conviction, which the postconviction court denied. On appeal, this court reversed the postconviction court's order and remanded the matter to the circuit court with directions to vacate the bail jumping conviction. See *State v. Smith*, No. 1996AP1257-CR, unpublished op. and order (WI App May 1, 1997).

In August 1997, Smith filed a motion for sentence modification and/or resentencing in Case No. 1993CF931935. Smith alleged that the circuit court's sentencing decision in the attempted homicide case was influenced by the since-vacated bail jumping conviction, entitling him to either sentence modification or resentencing. The postconviction court denied the motion in a written order stating that the sentence

was imposed strictly on the gravity of the offense, the defendant's character, and the nature of the crime[.] The presence or absence of the other charge clearly would not have altered the sentence in [Case No. 1993CF931935], and its absence does not constitute a new factor for purposes of modification in this case.

Smith did not appeal from that order.

Following the postconviction court's order, Smith filed numerous postconviction motions and petitions unrelated to this appeal. In December 2024, Smith filed the motion for resentencing underlying this appeal. Smith argued that the "trial/sentencing court considered an improper and unconstituion[al] sentencing factor by factoring in a bail jumping conviction that

was *null and void ab initio* when pronouncing sentence in [the] instant case, thus, creating a ‘new factor’ justifying a resentenc[ing].” The postconviction court denied the motion, noting that Smith raised the exact same argument in his 1997 motion for sentence modification and/or resentencing. The postconviction court found that Smith’s argument was barred by *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), because it was previously litigated. This appeal follows.

On appeal, Smith contends that our decision vacating his bail jumping conviction constitutes a new factor warranting resentencing. We disagree.

A matter previously litigated may not be re-litigated in a subsequent postconviction proceeding, no matter how a defendant rephrases the issue. *Id.* Here, Smith contends that the vacated bail jumping conviction constitutes a new factor warranting resentencing. Regardless of how Smith tries to articulate the issue, the basis of Smith’s 1997 motion and the motion underlying this appeal are exactly the same—both allege that the circuit court wrongfully considered Smith’s bail jumping conviction when rendering its sentence. As best as this court can discern, Smith does not even acknowledge the *Witkowski* bar. Instead, he repeatedly claims that he is entitled to resentencing fundamentally using the same argument he raised almost thirty years ago. He is procedurally barred from re-raising the claim. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994).

For the foregoing reasons, we affirm the order denying Smith’s motion for resentencing.

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals