



OFFICE OF THE CLERK
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 III

July 7, 2026

To:

Hon. Vincent R. Biskupic
Circuit Court Judge
Electronic Notice

Alexander Schmidt
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Charles M. Stertz
Electronic Notice

Bret J. Dorton
112 E. Wilson Ave.
Appleton, WI 54911

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

2024AP2570	State of Wisconsin v. Bret J. Dorton (L. C. No. 2017CF805)
2024AP2571	State of Wisconsin v. Bret J. Dorton (L. C. No. 2018CF394)
2024AP2572	State of Wisconsin v. Bret J. Dorton (L. C. No. 2018CF490)
2024AP2573	State of Wisconsin v. Bret J. Dorton (L. C. No. 2019CF268)

Before Stark, P.J., Hruz, and Gill, 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).

In these consolidated appeals, Bret Dorton appeals from an order that denied his postconviction motion for relief in four cases that were handled jointly in the circuit court. Based upon our review of the briefs and record, we conclude at conference that these appeals are

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We affirm on the ground that the issues Dorton seeks to raise are procedurally barred by his prior proceedings.

Pursuant to a global plea agreement, Dorton pled no contest to seven charges in exchange for the dismissal of multiple other charges (all but one of which were read in) and the State’s agreement not to bring an additional charge against Dorton for first-degree reckless homicide by delivery of a controlled substance. Following sentencing, Dorton filed postconviction motions by counsel seeking plea withdrawal based upon his trial counsel’s alleged failure to share with him the full video of a law enforcement interview of a key witness, or alternately, resentencing based upon an alleged misuse of a risk assessment tool. The circuit court denied both motions, and this court affirmed the judgments of conviction and postconviction orders on appeal. *See State v. Dorton*, Nos. 2022AP223-CR, 2022AP224-CR, 2022AP225-CR and 2022AP226-CR, unpublished slip op. (WI App June 13, 2023).

Dorton, acting pro se, then filed the joint postconviction motion that is the subject of these appeals. Dorton sought to have his convictions overturned and be granted a “new trial” based upon the alleged ineffective assistance of his postconviction counsel, in violation of his Fourteenth and Sixth Amendment rights. Specifically, Dorton asserted that his postconviction counsel should have: (1) argued that Dorton’s trial counsel had a conflict of interest based upon his past representation of one of the State’s witnesses; (2) developed a stronger argument about the importance of the video Dorton had challenged in his prior plea withdrawal motion and direct appeal; (3) challenged the accuracy of statements the prosecutor made at sentencing about the

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

contents of monitored phone calls Dorton made in the jail; and (4) raised claims of ineffective assistance based on his trial counsel's alleged failures to adequately investigate the case, to file suppression motions, to notify the court about discrepancies in witness accounts and police reports, to obtain surveillance video, and to obtain an expert digital analysis of Dorton's cell phone. The circuit court denied the motion without a hearing. Dorton now raises the first three of these four issues on appeal.

As a threshold matter, the State correctly points out that Dorton has misframed his issues because the remedy for alleged ineffective assistance of postconviction counsel would *not* be to vacate convictions that were entered before postconviction counsel's representation even began. Rather, Dorton should have directly raised the issues he contends that postconviction counsel failed to raise as additional grounds for plea withdrawal or resentencing and he should have raised the alleged ineffective assistance of postconviction counsel as the reason why he did not raise those issues in his prior postconviction motions and on appeal. Even if Dorton had properly framed his issues, however, we conclude that they are procedurally barred.

First, a matter already litigated cannot be relitigated in subsequent postconviction proceedings "no matter how artfully the defendant may rephrase the issue." *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Additionally, no claim that could have been raised in a previously filed postconviction motion or direct appeal can be the basis for a subsequent WIS. STAT. § 974.06 motion unless the court finds there was a sufficient reason for failing to raise the claim in the earlier proceeding. Sec. 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). A defendant who asserts that postconviction counsel was ineffective for raising the wrong issues must show that the

nonraised issue was “clearly stronger” than the issues counsel did present. ***State v. Romero-Georgana***, 2014 WI 83, ¶¶45-46, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a defendant is procedurally barred from filing a successive postconviction motion is a question of law subject to de novo review. ***Id.***, ¶30.

Here, Dorton has already raised a claim that his trial counsel should have provided him with a full copy of the video of the law enforcement interview of a key witness in prior proceedings. Under ***Witkowski***, he cannot now raise the same issue with additional facts or arguments regarding prejudice. Dorton’s two remaining issues in this appeal are barred by ***Escalona-Naranjo*** because neither one is clearly stronger than the issues postconviction counsel raised on Dorton’s behalf.

Dorton’s claim that his trial counsel had a conflict of interest due to counsel’s prior representation of a prosecution witness is flawed because Dorton has not identified any facts relevant to the prior representation that would actually be adverse to Dorton’s interests in these cases. Therefore, Dorton cannot show that the alleged conflict of interest constitutes a manifest injustice warranting plea withdrawal.

Finally, Dorton’s claim that he was sentenced based upon inaccurate information is flawed because his allegations are insufficient to show that the circuit court actually relied upon any materially inaccurate information as a basis for Dorton’s sentences. *See generally State v. Tiepelman*, 2006 WI 66, ¶14, 291 Wis. 2d 179, 717 N.W.2d 1 (discussing the elements of an inaccurate sentencing information claim). We do not deem information to be “inaccurate” merely because it was contested or incomplete. Rather, the defendant must demonstrate the

information was “extensively and materially false.” *State v. Travis*, 2013 WI 38, ¶18, 347 Wis. 2d 142, 832 N.W.2d 491. Actual reliance requires a showing that the court gave explicit attention or consideration to the information, such that it “formed part of the basis for the sentence.” *Tiepelman*, 291 Wis. 2d 179, ¶14 (citation omitted).

At the sentencing hearing, the prosecutor summarized hours of recorded jail phone calls as showing that Dorton was verbally and emotionally abusive to his mother and girlfriend, that he attempted to manipulate witnesses and the legal system, and that he had no remorse for his actions. The prosecutor played a portion of one of the calls, in which Dorton appeared to suborn perjury for the preliminary hearing, as an example.

The circuit court made two references during the sentencing hearing to Dorton’s jail phone calls. First, it noted that it had taken the jail phone call exhibit into consideration, along with all of the other information presented. Later, it commented that the phone call it had reviewed “highlighted” that Dorton was “trying to direct things” within his circle. The phone call exhibit itself was plainly not inaccurate information. The court’s interpretation of what that phone call revealed about Dorton’s character was a fair inference, not an extensively and materially false fact. To the extent that Dorton contends the prosecutor mischaracterized other jail phone calls that were not introduced into the record, he has not shown that the court relied upon them.

Upon the foregoing,

IT IS ORDERED that the joint postconviction order entered in each of these cases is summarily affirmed. 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