



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 I

August 25, 2026

To:

Hon. Laura Crivello
Circuit Court Judge
Electronic Notice

Nicholas DeSantis
Electronic Notice

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

Donnell Lashon Weaver 242620
Racine Correctional Institution
P.O. Box 900
Sturtevant, WI 53177-0900

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

2025AP201

State of Wisconsin v. Donnell Lashon Weaver
(L.C. # 2016CF3062)

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).

Donnell Lashon Weaver, pro se, appeals the order denying his WIS. STAT. § 974.06 (2023-24) motion for resentencing.¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21(1). We summarily affirm.

In 2017, Weaver pled guilty to second-degree reckless homicide, second-degree recklessly endangering safety, and possession of a firearm by a felon after a shooting. His

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

postconviction and appellate attorney filed a no-merit appeal and report. Weaver responded and counsel filed a supplemental report. This court agreed with appointed counsel's assessment in his no-merit report that there were no issues of arguable merit that Weaver could raise in postconviction proceedings and affirmed. See **State v. Weaver**, No. 2018AP2226-CRNM, unpublished op. and order (WI App May 4, 2021).² The Wisconsin Supreme Court denied Weaver's petition for review.

More than three years after his petition for review was denied, Weaver, pro se, filed the underlying motion for resentencing. He argued that the circuit court sentenced him based on "speculation or unfounded allegations" that his conduct in this case led to the subsequent shooting of two other victims and relied on this inaccurate information in imposing its sentence. The circuit court rejected Weaver's motion as procedurally barred under **State v. Tillman**, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574, because he already had a no-merit appeal, and the no-merit procedures were properly followed. The court additionally held that even if Weaver's claim was not procedurally barred, it was meritless.

Any issue which either was or could have been raised in a direct appeal cannot be the basis for a subsequent postconviction motion under WIS. STAT. § 974.06, unless there was a sufficient reason for failing to raise the issue earlier. **State v. Escalona-Naranjo**, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). The procedural bar of **Escalona-Naranjo** may be applied to a defendant whose direct appeal was processed under the no-merit procedures set forth in WIS.

² The no-merit report, Weaver's response, and counsel's supplemental no-merit report do not appear in this appellate record. However, the record does contain our opinion, which references the filings.

STAT. RULE 809.32, so long as the no-merit procedures were in fact followed and the record demonstrates a sufficient degree of confidence in the result. *Tillman*, 281 Wis. 2d 157, ¶¶19-20. Whether a claim is procedurally barred is a question of law that we review de novo. *Id.*, ¶14.

Here, Weaver’s claim is procedurally barred because it has already been litigated. This court has already performed its duty to fully review the record and search for any issue of arguable merit. See *State v. Allen*, 2010 WI 89, ¶58, 328 Wis. 2d 1, 786 N.W.2d 124. We concluded that no such issues existed. We paid particular attention to the circuit court’s exercise of sentencing discretion and concluded there was no issue of arguable merit related to sentencing. Nothing in our current review of the record undermines our confidence in this conclusion.³

As this court has explained, even “a defendant who fails to raise an issue in a response to a no-merit report gets *some* review [by this court]: enough review to determine that the issue is not of arguable merit.” *Id.*, ¶59. In other words, Weaver’s current claim has already been finally adjudicated by this court through the no-merit procedure. “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).

³ In *State v. Fortier*, 2006 WI App 11, ¶¶24-27, 289 Wis. 2d 179, 709 N.W.2d 893, we reasoned that the failure of either counsel or this court to address an issue of “evident” merit led to the conclusion that the no-merit procedures had not been adequately followed so as to warrant confidence in the outcome of the appeal. The Wisconsin Supreme Court appears to have approved this logic when it noted that a defendant may not be barred from raising an issue that the court of appeals and appellate counsel “*should* have found.” *State v. Allen*, 2010 WI 89, ¶63, 328 Wis. 2d 1, 786 N.W.2d 124. It is therefore implicit in our statement that we retain confidence in the outcome of the no-merit proceeding that we do not share Weaver’s view of the merits of the issues that he now seeks to raise. To address in detail why that is the case, however, would undermine the judicial efficiency that is supposed to be achieved by applying the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

Furthermore, Weaver has not provided a sufficient reason for why he did not raise the issues that are the subject of his current WIS. STAT. § 974.06 motion in a response to the no-merit report. In this regard, Weaver cites only his lack of awareness of the issues. He relies on an affidavit from a fellow inmate who, in 2024, purportedly directed Weaver to case law that might be applicable to Weaver's circumstances.

Weaver's purported ignorance of the law is not a sufficient reason to overcome the procedural bar he faces. See *Allen*, 328 Wis. 2d 1, ¶¶43-45. Consequently, we agree with the State that Weaver is procedurally barred from raising the issues set forth in the underlying motion. In light of this resolution, we need not discuss the merits of Weaver's claim or his argument that he is entitled to plain error review. See *State v. Castillo*, 213 Wis. 2d 488, 492, 570 N.W.2d 44 (1997) ("[a]n appellate court should decide cases on the narrowest possible grounds").

Therefore,

IT IS ORDERED that the order 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