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February 16, 2021

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

2020AP794

State of Wisconsin v. Sam Gwin, Jr. (L.C. # 2005CF2230)

Before Dugan, Graham and White, 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).

Sam Gwin, Jr., *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2017-18).¹ He argues that the circuit court erroneously

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

exercised its sentencing discretion. After reviewing the briefs and record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21. Upon review, we affirm.

In 2006, Gwin was convicted after a jury trial of first-degree intentional homicide and unlawfully possessing a firearm as a convicted felon. The circuit court sentenced him to life imprisonment for the homicide, with a parole eligibility date of twenty-five years. The circuit court also sentenced him to five years of initial confinement and five years of extended supervision for unlawfully possessing a firearm, to be served consecutively. Since his conviction, Gwin has filed multiple motions for postconviction relief and two appeals challenging his conviction, all of which have been unsuccessful. Gwin filed the current motion on March 5, 2020. The circuit court denied the motion.

Gwin contends that the circuit court erroneously exercised its discretion when it sentenced him because it failed to adequately explain the reasons for the sentence it imposed. Gwin's argument is procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). *Escalona-Naranjo* mandates that a person "raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion" unless the person provides a sufficient reason for failing to do so. *Id.* "[A]ny claim that could have been raised on direct appeal or in a previous WIS. STAT. § 974.06 ... postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason." *State v. Lo*, 2003 WI 107, ¶2, 264 Wis. 2d 1, 665 N.W.2d 756 (footnote and parenthetical information omitted). Gwin has not provided a sufficient reason for failing to previously raise this claim. Therefore, it is procedurally barred by *Escalona-Naranjo*, 185 Wis. 2d at 185.

To the extent that Gwin's motion could be read as seeking sentence modification, rather than challenging the circuit court's exercise of sentencing discretion in the first instance, the motion is untimely. A motion for sentence modification pursuant to WIS. STAT. § 973.19(1) must be brought within ninety days of sentencing. Moreover, the circuit court's inherent authority to modify a sentence may be exercised only in limited circumstances not present here. *See State v. Grindemann*, 2002 WI App 106, ¶21, 255 Wis. 2d 632, 648 N.W.2d 507 (stating that the circuit court may exercise its inherent authority to modify a sentence when a new factor warrants sentence modification or the original sentence was unduly harsh or unconscionable).

Accordingly,

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.

Sheila T. Reiff
Clerk of Court of Appeals