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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  
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**DISTRICT I**

September 12, 2023

To:

Hon. Jonathan D. Watts  
Circuit Court Judge  
Electronic Notice

Jacob J. Wittwer  
Electronic Notice

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

Jeffrey Donald Leiser 330229  
Redgranite Correctional Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

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

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2022AP953

State of Wisconsin v. Jeffrey Donald Leiser (L.C. # 2003CF6154)

Before White, C.J., Donald, P.J., and Dugan, 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).**

Jeffrey Donald Leiser, *pro se*, appeals from an order denying his motion for postconviction relief. 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(1) (2021-22).<sup>1</sup> Because Leiser's claims are procedurally barred, we affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

### ***Background***

In 2004, Leiser was convicted of first-degree sexual assault of a child. Since that time, Leiser has pursued a direct appeal, multiple collateral postconviction motions under WIS. STAT. § 974.06 and appeals from orders denying those motions, and other avenues of relief.

As relevant here, in his 2014 postconviction motion, Leiser raised a claim that the circuit court “violate[d] [the] Double Jeopardy Clause, by resentencing Leiser on his prior conviction, and placing too much weight on Leiser[’s] constitutional right not to admit guilt or show remorse.” The motion cited *Scales v. State*, 64 Wis. 2d 485, 219 Wis. 2d 286 (1974), and related case law for the proposition that a circuit court errs when it imposes a harsher sentence based on a defendant’s refusal to admit guilt. Leiser appealed the denial of this motion. We concluded that all Leiser’s claims were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), as he had failed to demonstrate a “sufficient reason” why his claims could not have been raised previously. See *State v. Leiser*, No. 2014AP901, unpublished op. and order (WI App Mar. 25, 2015).

In 2022, Leiser filed a motion for resentencing pursuant to the circuit court’s inherent power and authority, citing *State v. Noll*, 2002 WI App 273, 258 Wis. 2d 573, 653 N.W.2d 895. Leiser asserted that during sentencing, the circuit court improperly exercised its discretion by relying “only ... on [his] failure to admit guilt or [accept] responsibility and show remorse,” in violation of his Fifth Amendment rights as articulated in *Scales* and other case law. The motion further alleged that the circuit court improperly relied on Leiser’s 1996 conviction for a previous sexual assault in determining his sentence for the 2004 conviction. The postconviction court

denied the motion, construing it as a WIS. STAT. § 974.06 motion.<sup>2</sup> See *Amek Bin-Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). This appeal follows.

### *Discussion*

At issue is whether the postconviction court properly rejected Leiser’s latest postconviction motion seeking to challenge his 2004 conviction because it was procedurally barred. The circuit court may exercise inherent authority to modify a sentence without regard to time limits only if the defendant proves that a new factor justifies a modification. See *Noll*, 258 Wis. 2d 573, ¶¶11-12. 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, even though it was then in existence, 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 (citation omitted).

Leiser’s claims that the circuit court improperly considered his previous conviction and improperly relied on his failure to accept responsibility for the underlying crime are not new factors. He knew about them as soon as the circuit court made its sentencing remarks in 2004. We reject Leiser’s attempt to evade the procedural bar simply by framing his claims as ones that can be addressed pursuant to the court’s inherent authority under *Noll*.

Leiser’s motion is properly construed as a motion under WIS. STAT. § 974.06 and subject to *Escalona-Naranjo*’s procedural bar. Leiser’s claims are barred either because he raised them

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<sup>2</sup> The Honorable J.D. Watts presided over Leiser’s most recent postconviction proceedings. The Honorable Mary M. Kuhnmuensch sentenced Leiser in 2004.

before in his 2014 postconviction motion, *see State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), or because he failed to allege, let alone demonstrate, a “sufficient reason” why he did not raise them in one of his previous motions or appeals, *see Escalona-Naranjo*, 185 Wis. 2d at 185. The postconviction court properly denied Leiser’s latest motion.

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.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*