



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

February 11, 2025

To:

Hon. J.D. Watts
Circuit Court Judge
Electronic Notice

Eliot M. Held
Electronic Notice

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

James Earl Norwood 216774
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2022AP1586

State of Wisconsin v. James Earl Norwood (L.C. # 2015CF3397)

Before White, C.J., Geenen and Colón, 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).

James Earl Norwood, *pro se*, appeals an order denying his second motion brought pursuant to WIS. STAT. § 974.06 (2021-22).¹ 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. We affirm.

In 2015, a jury convicted Norwood of second-degree sexual assault with use of force. Norwood appealed and this court affirmed his conviction. *See State v. Norwood*,

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

No. 2018AP869-CR, unpublished slip op. (WI App Jan. 8, 2019). Norwood then filed a *pro se* WIS. STAT. § 974.06 motion collaterally attacking his conviction based on ineffective assistance of trial and postconviction counsel, newly discovered DNA evidence, and an allegation that the State concealed exculpatory evidence. The circuit court denied the motion and this court affirmed. *See State v. Norwood*, No. 2019AP1252, unpublished op. and order (WI App Dec. 1, 2020).

Norwood then filed the WIS. STAT. § 974.06 motion underlying this appeal. Norwood again alleged that his trial counsel was ineffective, that newly discovered DNA evidence proved his innocence, and that the State withheld exculpatory evidence. The circuit court denied the motion, finding that Norwood’s arguments pertaining to newly discovered evidence were a “rehash” of arguments previously addressed by both the circuit court and this court and therefore barred by *State v. Witkowski*, 163 Wis. 2d 985, 473 N.W.2d 512 (Ct. App. 1991), and that Norwood’s other claims were procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because Norwood failed to provide a sufficient reason for failing to raise the claims earlier. This appeal follows.

A defendant is not entitled to relief on claims that are procedurally barred. *See State v. Romero-Georgana*, 2014 WI 83, ¶71, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a defendant is procedurally barred from filing a postconviction motion is a question of law subject to *de novo* review. *Id.*, ¶30. *Escalona-Naranjo* holds that an issue that could have been raised in a direct appeal or in a postconviction motion 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. *Escalona-Naranjo*, 185 Wis. 2d at 185.

On appeal, Norwood again raises the claims he brought forth in his second postconviction motion. He also argues that the circuit court provided the jury with improper jury instructions that shifted the burden of proof from the State to the defense. We reject Norwood's arguments.

Most of Norwood's arguments are attempts to rehash previously adjudicated claims pertaining to ineffective assistance of counsel, DNA evidence, and the State's alleged concealment of evidence. A matter once litigated may not be relitigated in a subsequent postconviction motion no matter how artfully the defendant may rephrase the issue. *See* WIS. STAT. § 974.06(4); *Witkowski*, 163 Wis. 2d at 990. To the extent Norwood raises issues not previously raised on appeal or in his first postconviction motion, we agree with the postconviction court that Norwood failed to provide a sufficient reason for failing to do so. *See Escalona-Naranjo*, 185 Wis. 2d at 185.

In his brief to this court, Norwood also contends that the circuit court issued an improper jury instruction that shifted the burden of proof from the State to the defense. As best as this court can determine, Norwood did not raise this issue in the postconviction motion underlying this appeal. Norwood did raise the issue in his first postconviction motion, but failed to renew that issue on appeal and we deemed the issue abandoned. *See Norwood*, No. 2019AP1252, at 4. Thus, this is the first time Norwood is raising the jury instruction issue on appeal. We typically do not address issues raised for the first time on appeal and see no reason to do so in this case. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727.²

² To the extent Norwood may argue that he did raise the jury instruction issue in his second postconviction motion by attaching his first postconviction motion, perhaps seeking incorporation, we conclude that the issue is procedurally barred. By abandoning the issue in his previous appeal, it has been finally litigated. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the postconviction 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