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**DISTRICT I**

March 4, 2025

To:

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Circuit Court Judge  
Electronic Notice

Jacob J. Wittwer  
Electronic Notice

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

Roberto I. Lopez 327809  
Jackson Correctional Inst.  
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Black River Falls, WI 54615-0233

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

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2023AP1264

State of Wisconsin v. Roberto I. Lopez (L.C. # 2002CF3278)

Before Donald, P.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).**

Roberto I. Lopez, *pro se*, appeals a circuit court order that denied him postconviction relief. Based upon a review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).<sup>1</sup> We affirm. We also caution Lopez that continued submission of repetitive and unsupported postconviction claims may lead this court to impose sanctions upon him.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

In 2002, the State filed a criminal complaint charging Lopez with two counts of first-degree intentional homicide and one count of armed robbery, all as a party to a crime. The State alleged that on July 29, 2001, Lopez and four other men agreed to rob another person. The men entered the home of their mark and his companion, restrained the two victims, and took cash and cocaine. Then, using duct tape that Lopez supplied, two of his co-actors suffocated the victims to death by taping their faces.

Lopez fled, but in due course he was found in the Dominican Republic and taken into custody. Pursuant to a plea agreement, he pled guilty in January 2007 to two counts of felony murder with armed robbery as the underlying felony. Lopez moved to withdraw his pleas before sentencing, but the circuit court denied the motion.

At sentencing, Lopez faced an eighty-year sentence on each count. *See* WIS. STAT. §§ 940.03, 943.32(2), 939.50(3)(b) (2001-02).<sup>2</sup> The circuit court imposed two concurrent thirty-five-year terms of imprisonment, each bifurcated as twenty years of initial confinement and fifteen years of extended supervision.

With the assistance of postconviction counsel, Lopez moved for postconviction relief, again seeking to withdraw his guilty pleas. The circuit court denied the motion, and Lopez appealed. We affirmed. *State v. Lopez (Lopez I)*, No. 2008AP5-CR, unpublished slip op. (WI App Dec. 9, 2008).

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<sup>2</sup> WISCONSIN STAT. § 940.03 (2001-02) and WIS. STAT. § 943.32(2) (2001-02) were amended by 2001 Wis. Act 109, § 585 and § 767, respectively. The amendments first applied to offenses committed on February 1, 2003. 2001 Wis. Act 109, §§ 9359, 9459(1). The amendments thus did not apply to Lopez's criminal conduct on July 29, 2001.

In the years that followed, Lopez sought postconviction relief from the circuit court numerous times.<sup>3</sup> Those efforts were unsuccessful. Lopez also launched appeals and other proceedings in this court thirteen times.<sup>4</sup> We rejected, denied, or dismissed all of his claims.

Underlying the instant appeal is a motion that Lopez filed on June 30, 2023, seeking postconviction relief under WIS. STAT. § 974.06. He alleged that his trial counsel was ineffective for: (1) failing to challenge his plea agreement on the ground that its terms violated an extradition treaty with the Dominican Republic; (2) coercing him into entering a plea agreement involving felony murder charges; and (3) failing to “withdraw the plea agreement prior to sentencing.” He further alleged that the circuit court erroneously exercised its discretion by denying his motion for plea withdrawal prior to sentencing and by imposing an excessive and therefore illegal sentence. The circuit court rejected the claims, concluding that they were procedurally barred. Lopez appeals.

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<sup>3</sup> The circuit court record now before us is enormous—the last item is numbered 414—and includes nearly two dozen postconviction motions and petitions for relief that Lopez has filed on his own behalf. The record also includes a multitude of letters as well as other documents from Lopez that are difficult to categorize but that set forth complaints about his convictions.

<sup>4</sup> See *State v. Lopez (Lopez II)*, No. 2009AP1300, unpublished slip op. (WI App Feb. 2, 2010); *State v. Lopez (Lopez III)*, No. 2013AP1702, unpublished op. and order (WI App Oct. 30, 2013); *State v. Lopez (Lopez IV)*, No. 2013AP2346-CR, unpublished op. and order (WI App Jan. 17, 2014); *State v. Lopez (Lopez V)*, No. 2014AP279, unpublished op. and order (WI App Nov. 11, 2014); *State v. Lopez (Lopez VI)*, No. 2015AP99, unpublished op. and order (WI App Feb. 11, 2015); *State ex rel. Lopez v. Dittmann (Lopez VII)*, No. 2016AP799-W, unpublished op. and order (WI App Apr. 7, 2017); *State v. Lopez (Lopez VIII)*, No. 2017AP761, unpublished op. and order (WI App May 3, 2017); *State v. Lopez (Lopez IX)*, No. 2018AP973, unpublished op. and order (WI App June 25, 2018); *State ex rel. Lopez v. Circuit Court for Milwaukee County (Lopez X)*, No. 2018AP1212-W, unpublished op. and order (WI App Aug. 8, 2018); *Lopez v. Bartow, (Lopez XI)*, No. 2018XX1374, unpublished order (WI App Aug. 29, 2018); *State v. Lopez (Lopez XII)*, No. 2019AP2219, unpublished op. and order (WI App Dec. 15, 2020); *State ex rel. Lopez v. Tegels (Lopez XIII)*, No. 2020AP720-W, unpublished op. and order (WI App May 13, 2021); and *State v. Lopez (Lopez XIV)*, No. 2022AP463, unpublished op. and order (WI App July 11, 2022).

WISCONSIN STAT. § 974.06 is the mechanism for a defendant to pursue constitutional and jurisdictional challenges to a criminal conviction after exhausting his or her right to a direct appeal. *State v. Henley*, 2010 WI 97, ¶52, 328 Wis. 2d 544, 787 N.W.2d 350. The opportunity to mount such challenges is limited, however, because “[w]e need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, a convicted defendant may not bring postconviction claims under § 974.06 unless the defendant states a sufficient reason for failing to raise those claims in prior motions and appeals. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Moreover, a convicted defendant who has litigated a claim for postconviction relief may not relitigate that claim, “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).

Whether a defendant’s claims are procedurally barred presents a question of law that this court reviews *de novo*. *State v. Thames*, 2005 WI App 101, ¶10, 281 Wis. 2d 772, 700 N.W.2d 285. We agree with the circuit court that Lopez’s current claims are barred.

It appears that Lopez did not raise his current claims of ineffective assistance of trial counsel in his previous litigation, so he must present a sufficient reason for pursuing the claims now. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Lopez suggests that he has such a reason, namely, that his original postconviction counsel was ineffective for failing to raise the claims on his behalf. Appellate courts recognize that ineffective assistance of postconviction counsel can, in some circumstances, constitute a sufficient reason for an additional postconviction motion or appeal. *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. In this case, however, postconviction counsel’s alleged ineffectiveness for failing to raise particular claims during the proceedings underlying *Lopez I* does not explain Lopez’s failure to raise or

adequately address all of his claims in the multitude of pleadings that he subsequently filed on his own behalf. Therefore, Lopez’s suggestion that his postconviction counsel was ineffective does not constitute a sufficient reason for his most recent claims alleging trial counsel’s ineffectiveness. Accordingly, those claims are barred.

As to Lopez’s allegations that the circuit court erred when it resolved his plea withdrawal motions and when it imposed his sentence, those claims are barred because Lopez previously litigated them. See *Witkowski*, 163 Wis. 2d at 990. In *Lopez I*, this court considered and rejected Lopez’s claims that the circuit court erroneously denied his motions for plea withdrawal. *Id.*, No. 2008AP5-CR, ¶¶7, 18. Thus, those claims are resolved and may not be relitigated. Similarly, in a postconviction order dated May 1, 2013, the circuit court considered and rejected Lopez’s claim that he received excessive sentences. Lopez filed a notice of appeal from that order, but he later voluntarily dismissed his appeal. *State v. Lopez (Lopez III)*, No. 2013AP1702, unpublished op. and order (WI App Oct. 30, 2013). The circuit court’s decision therefore conclusively resolved the issue. *Thames*, 281 Wis. 2d 772, ¶12. Lopez may not raise it again. See *Witkowski*, 163 Wis. 2d at 990.

Lopez asserts that he may relitigate his claim that he received excessive sentences regardless of any procedural bar. In support, he cites cases from other jurisdictions that, in his view, allow a convicted person to challenge the legality of a sentence “at any time.” We are not persuaded that he accurately describes the mandates of the cases that he cites. Regardless, those cases do not discuss or apply Wisconsin law, and Lopez fails to demonstrate that they nonetheless govern here. Accordingly, we do not rely on them. We rely instead on controlling Wisconsin authority, which bars Lopez from repeatedly litigating the same claim. *Id.*

At this juncture, the court will also warn Lopez regarding his excessive postconviction filings. Serial litigation imposes a significant and unwarranted burden on the judicial system. *State v. Casteel*, 2001 WI App 188, ¶23, 247 Wis.2d 451, 634 N.W.2d 338. Even when a litigant voluntarily dismisses an unwarranted appeal or a court does not reach the merits of a claim due to procedural or jurisdictional defects, the court is taxed by the proceeding and the suits of other litigants are delayed. No person is entitled to consume the limited resources of our courts with claims that the person knows or should know are prohibited by familiar rules barring repetitious and vexatious litigation. *See id.* Therefore, we caution Lopez that we are prepared to impose appropriate sanctions upon him should he continue to file claims that he has previously raised or that are unsupported by a sufficient reason for failing to raise them earlier. *See id.*, ¶¶25-26. We will not approve the squandering of scarce judicial resources in considering and reconsidering one individual's claims if those claims are frivolous, abusively repetitive, or otherwise improper. *Id.* Lopez should consider himself warned.

Upon the foregoing,

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.

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