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**DISTRICT III**

April 29, 2025

To:

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Circuit Court Judge  
Electronic Notice

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Electronic Notice

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Clerk of Circuit Court  
Door County Courthouse  
Electronic Notice

Ronald L. Kupsy 618624  
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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2023AP1610

State of Wisconsin v. Ronald L. Kupsy (L. C. No. 2014CF17)

Before Stark, P.J., Hruz, and Gill, 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).**

Ronald Kupsy, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2023-24)<sup>1</sup> motion for postconviction relief. He raises six issues. 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.

The facts and procedural history of this case were set forth at length in one of our prior decisions pertaining to Kupsy's criminal convictions and will not be repeated here. *See State v.*

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

**Kupsky**, No. 2019AP693, unpublished op. and order (WI App Oct. 6, 2020). Suffice it to say, in 2016 a jury convicted Kupsky of first-degree sexual assault of a child under the age of thirteen, sexual exploitation of a child, possession of child pornography, and felony bail jumping. Kupsky's postconviction counsel filed a motion seeking a new trial, arguing that Kupsky's trial counsel provided him with ineffective assistance by failing to stipulate that Kupsky had been released on bail for a felony charge. The circuit court denied Kupsky's motion for a new trial after holding a **Machner**<sup>2</sup> hearing, but it granted Kupsky's motion to vacate a sentencing surcharge. On direct appeal, we affirmed both the judgment of conviction and the circuit court's order denying Kupsky's motion for a new trial. See **State v. Kupsky**, No. 2017AP2146-CR, unpublished slip op. (WI App July 24, 2018). The Wisconsin Supreme Court denied Kupsky's petition for review.

While Kupsky's petition for review with the Wisconsin Supreme Court was pending, Kupsky filed his first pro se WIS. STAT. § 974.06 postconviction motion in the circuit court, raising sixteen issues. The court denied the motion because Kupsky's first appeal was still pending. After the petition for review was denied, Kupsky filed his second pro se § 974.06 postconviction motion, raising fifteen issues. Again, the court denied the motion. Kupsky filed a pro se appeal from the circuit court's order. On appeal, we concluded that the fifteen claims Kupsky raised in his second § 974.06 postconviction motion were procedurally barred. See **Kupsky**, No. 2019AP693 at 6.

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<sup>2</sup> See **State v. Machner**, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

Kupsky then filed his third pro se WIS. STAT. § 974.06 postconviction motion, raising six new issues. The circuit court denied the motion. Kupsky now appeals the court's order denying his claims.

It is well established that a person is barred from raising issues that he or she could have raised in a prior postconviction motion or on direct appeal unless he or she shows a “sufficient reason” why the claims were not previously raised. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Kupsky's current claims are procedurally barred pursuant to *Escalona-Naranjo* because he has failed to allege a sufficient reason for not raising these issues in his prior postconviction motions or on direct appeal. See *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756.

Kupsky contends that his claims should not be subject to the procedural bar of *Escalona-Naranjo* because the attorney who represented him during his first postconviction motion proceedings provided ineffective assistance. This explanation is insufficient to overcome the procedural bar of *Escalona-Naranjo* because—beyond the first postconviction motion filed by his counsel—Kupsky filed two prior postconviction motions pro se. He has not provided any reason for waiting to raise his six issues until the current motion, which is his *third* pro se motion.

Kupsky also contends that his current claims should not be subject to the procedural bar of *Escalona-Naranjo* because, while some of his arguments *were* made before, the circuit court never ruled on the arguments because he is now raising them as constitutional claims, rather than sentencing claims. “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). Kupsky’s arguments are barred even though they have been reframed.

Kupsky next argues that his claims should not be procedurally barred because they are based, in part, on new information. However, Kupsky did not raise this argument in the circuit court. Therefore, we will not consider it further. See **Tatera v. FMC Corp.**, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810 (“Arguments raised for the first time on appeal are generally deemed forfeited.”).

Finally, Kupsky contends that his arguments should not be barred based on **State v. Romero-Georgana**, 2014 WI 83, ¶¶45-46, 360 Wis. 2d 522, 849 N.W.2d 668, which provides that a defendant seeking to raise serial postconviction claims must show that the issue the defendant is attempting to raise is clearly stronger than his prior issues. Kupsky contends that his current issues are clearly stronger because they are “clearly defined under the law,” unlike the issues he originally asserted. However, Kupsky has failed to make any comparative analysis of the issues, further weakening his claim that he should not be subject to the procedural bar.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to 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*