

APPENDIX:

- 1) The decision of the Court of Appeals denying reconsideration motion, dated January 4, 2011 (Exh. D);
- 2) The decision of the Court of Appeals, Dist. I., dated December 14, 2010 (Exh. C);
- 3) The decision and order of the trial court denying motion for postconviction relief, honorable Jeffrey A. Conen, dated February 16, 2010 (Exh. B);
- 4) Docket sheets--original--, pp.1-9; (Exh. A).

STATE OF WISCONSIN VS
 ROWELL, SEAN FITZGERALD
 1932 W. BROWN
 MILWAUKEE WI 53205

10-18-74

08-11-96

1ST DEGREE INTENTIONAL HOMICID A
 940.01(89)
 WHILE ARMED B
 939.63
 HABITUAL CRIMINALITY C
 939.62

COMPLAINANT:
 P.O. MARK CISKE, MPD

8-WAB BTRN

DATE OF ARREST
 10-06-96

CALLED BEFORE MARSHALL MURRAY

JCR

PRESIDING COURT COMMISSIONER

Kelly Hesbe
 ASSISTANT DISTRICT ATTORNEY

KATHERINE SCHOOR

COURT REPORTER
 100895

COURT REPORTER

(DATE)

DEFENDANT IN COURT

WITH ATTORNEY

Jeffrey Schwarz

THE DEFENDANT IS ADVISED THAT THE
 CASE IS ASSIGNED TO

JUDGE *Nansher* BRANCH *JF*

**Defendant given a copy of complaint
 Defendant's attorney waives reading of
 the complaint. Court reviewed complaint
 and finds probable cause to hold defendant
 for further proceedings.**

DEFENDANT ENTERS A PLEA OF NOT GUILTY

Statement by Public Defender *Jeffrey Schwarz*
 defendant not indigent/Defendant indigent
 and Public Defender will provide counsel.
 Case adjourned for Preliminary Hearing to
 10/17/96 at 8:30 in Branch *PE*
 Bail \$ *100,000 CASH*

COURT - MILWAUKEE COUNTY, WISCONSIN

3161 R13

SIDING JUDGE

DEFENDANT'S ATTORNEY

BAIL FIXED AT

TYPE OF RECOGNIZANCE POSTED

BAIL FORFEITURE AMOUNT

DATE

BAIL REINSTATEMENT AMOUNT

DATE

PD. TO CO. TREASURER AMOUNT

DATE

FINE FORFEITURE & COSTS

A/C

AMOUNT

AMOUNT

CLERK FEES

2

SHERIFF'S FEES

3

SHERIFF'S WITNESS FEES

4

MISCELLANEOUS FEES

7

CITIZEN WITNESS FEES

STATE

COUNTY

8

102 -
3 -

POLICE OFFICER FEES

10

CITIZEN WITNESS FEES-CITY

13

JAIL ASSESSMENT

30

COURT FEE

34

40 -

AUTOMATION FEE

35

DRUG ABUSE PROG. IMP. SURCH.

36

DOMESTIC ABUSE ASSESS.

62

TOTAL COSTS

CITY FORFEITURE

PENALTY ASSESSMENT

58

STATE FINE

14

15

17

COUNTY FORFEITURE

09

20

18

OWI-SURCHARGE

63

VICTIM/WITNESS SURCHARGE MISDEMEANOR

64

VICTIM/WITNESS SURCHARGE FELONY

70

70 -
215 -

TOTAL JUDGMENT

LESS

AMOUNT

PREVIOUSLY PAID

BALANCE

REFUND DUE

BAIL

UNDIST. REVENUE

19

66

CASHIER USE ONLY

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COLLEBARY COPY

Exhibit A

Docket Sheet 1-9

M

mat

PENDING CASES FOR DEFENDANT:

- BRANCH ADJ. DATE
- BRANCH ADJ. DATE
- BRANCH ADJ. DATE
- ...X... DEFENDANT HAS NO PENDING CASES

EXHIBITARY COPY

Date: OCT 17 1996

Judicial Court Commissioner Audrey Y. Brooks
Presiding, Preliminary Hearing Court

Assistant District Attorney William Molitor

Defendant in court with Attorney Cynthia Wynn

Court reporter KATHLEEN A. LRISCOTT
COURT REPORTER

JK

On defense motion, Court orders
witnesses sequestered.

Preliminary hearing proceeds and testimony taken.

Sworn for the State: Willie Cathey,
Willie Lockett, Leroy Shaw Milwaukee Police Officer/Detective

State rests. Defense rests.

Defense/State motion to dismiss
argued and denied/granted.

Information to be used in a motion...
to be used in a motion...
to be used in a motion...
to be used in a motion...

DOCKET SHEET 6455 R3

Case No. F-965047

Page No. 3

SO LIBRARY COPY

OCT 17 1996

Continued

Court finds probable cause and binds defendant over for trial. Original information received and filed; defendant given a copy, waives reading, is arraigned in open court and pleads not guilty. Court orders case adjourned to 10-21-96 at 8:30 in Br. JF for scheduling conference/arraignment/projected guilty plea/jury trial.

same bail

LR

October 21, 1996 Hon. David Hansher presiding, Branch 42 Circuit Court. Court Reporter Beth Fringer in court. Defendant in court with Attorney Cynthia Wynn. Assistant District Attorney William Molitor in court for the State. Case is continued to December 3, 1996 at 8:30AM for pretrial and to January 6, 1997 at 8:30AM for trial by jury in Branch 42(JF)

Cy

10-23-96

CERTIFICATION OF TRANSCRIPT AND TRANSCRIPT OF PROCEEDINGS COMMENCING

Preliminary Hearing

10-17-96

RECEIVED AND FILED. COPY OF TRANSCRIPT

FORWARDED TO Cynthia Wynn Esq

OS

Date: 12-3-96

Hon. David H. Hansher presiding

Br. 42 JF

Assistant District Attorney William Molitor

Defense Counsel Cynthia Wynn with Defendant in Court

Court Reporter OFF THE RECORD

LR

~~On Motion of State/Defense~~

Court orders case ADJOURNED to:

12-11-96 at 8:30

AM/PM

before Branch JF for Final Pretrial

Status/Hearing

Page No.

Case No.

42-3-96 Continue

DOCKET SHEET 6455 R3

Case No. F-965047

Page No. - 4 -

Court orders case remains calendared for Jury Trial on 1-6-97 at 8:30 a.m. in Branch 42.

same bail

LR

Date: December 11, 1996

Hon. David A. Hanser presiding
Br. 42

Assistant District Attorney William Melitor

Defense Counsel Cynthia Myron

Court Reporter Beth Fringer

Defendant in court. At request of Defendant, Defense Counsel's motion to withdraw is granted. Defendant is advised only one more attorney can be appointed. Case is continued to January 6, 1997 at 8:30 AM for status in Branch 42 (J3). Bail is to continue. New Counsel may file additional motions.

Date: January 6, 1997

Hon. David A. Hanser presiding
Br. 42

Assistant District Attorney William Melitor

Defense Counsel Jane Rice

Court Reporter Jessie Allison

Defendant in court. Case is continued to February 3, 1997 at 8:30 AM for pretrial and to February 27, 1997 at 8:30 AM for trial by jury in Branch 42 (J3).

Page No.

Case No.

Case No. F 965041

Page No. 5

Date: February 3, 1997

Hon. David A. Hansher presiding
Br. 42

Assistant District Attorney William Molitor

Defense Counsel Jean Kes

Court Reporter Case not called.

Defendant in custody. Pretrial is conducted.
Case is continued to February 24, 1997 at 8³⁰ AM
for trial by jury in Branch 42 (JF) U

February 24, 1997 Hon. David A. Hansher
presiding. Branch 42 (JF)

Due to congested calendar, case is transferred to
Branch 13 for trial by jury at 1³⁰ PM today. U

DOCKET SHEET 6455 R3

Case No. F-965047Page No. 6

February 24, 1997

Hon. Victor Manian Presiding for Hon. David Hansher

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor Present in court for the State

Hattie Mitchell Court reporter

Parties thereupon proceeded to impanel a jury. Case continued to February 25, 1997 at 9:00 a.m. for continuation of jury trial. Same bail. mjs

C

February 25, 1997

Hon. Victor Manian Presiding for Hon. David Hansher

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor present in court for the State

Hattie Mitchell Court reporter

Jury selection continued.

1. Susan Schneider
2. Anthony Wolf
3. Timothy Sommers
4. Congetta Blazek
5. Bobby Davis
6. Fredrick Aikens
7. Charlene Briton-Thomas
8. Norman Douyette Jr.
9. Charles Snead
10. Mark Luebke
11. Michael Antony
12. Maryann Radowski

Twelve good and lawful citizens of the county of Milwaukee Wisconsin qualified to serve as jurors in the above entitled cause and who were duly impaneled and sworn. Jury list in writing received and filed. Outside the presence of the jury, upon motion of the State, court orders a Body Attachment for missing witness Layvel Pierce, Black Female 42 years old, address of 2431 North 20th Street, Milwaukee, WI 53207. Court sets bail at \$500 cash. BODY ATTACHMENT ISSUED. Jury in box. Opening statements made by Attorney's Molitor and Kies. Trial proceeded and proofs submitted. Sworn for prosecution: Milwaukee Police Officer Carlton Boswell and Milwaukee Police Detective Leroy Shaw. Outside the presence of the jury, BODY ATTACHMENT returned by the Milwaukee Police Department. Body Attachment, filed. Case continued to 1:30 p.m. on the same day for continuation of jury trial. Same bail. mjs

SAME DAY SAME APPEARANCES

Jury trial continued. Sworn for prosecution: Thomas Hull, Willie Ray Lockett and Latosha Dennis. Case continued to February 26, 1997 at 9:15 a.m. for continuation of jury trial. Same bail. mjs

C

February 26, 1997

Hon. Victor Manian Presiding for Hon. David Hansher

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor present in court for the State

Hattie Mitchell Court reporter

Jury trial continued. Sworn for prosecution: Dr. Lynda Biedrzycki, Monty Lutz and Willie Cathey. Case continued to 1:30 p.m. on the same day for continuation of jury trial. Same bail. mjs

SAME DAY SAME APPEARANCES

Jury trial continued. Sworn for the prosecution: Milwaukee Police Detectives Percy Moore, Leroy Shaw, Kathy Helm, Kenneth Grams and Mark Ciske. State rests. Defense rests. Testimony closed.

Page No.

Case No.

SCILIBRARY.COM

Outside the presence of the jury, defendant waives his right to testify. Defense moves to dismiss. Arguments heard. Motion denied. Case continued to February 28, 1997 at 9:00 a.m. for continuation of jury trial. Same bail. mjs

Cu

February 27, 1997

Hon. Victor Manian Presiding for Hon. David Hansher

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor present in court for the State

Joanne Allison Courtreporter

Jury trial continued. Jury instructed. Cause argued by counsel and submitted. Court further charged the jury who at the hour of 11:30 a.m. retired to deliberate in charge of Deputy Sheriff's Keith Kolodzyk and Janet Robinson who were sworn for that purpose. Jury questions, answered by the court, filed. At the hour of 3:30 p.m. the jury reached the following verdict: "We, the Jury, find the defendant, Sean F. Rowell, II guilty of First Degree Intentional Homicide in manner and form charged in the information herein." Dated at Milwaukee, Wisconsin, this 27th day of February. Michael J. Antennae, foreperson.

If you find the defendant guilty, answer the following question "yes" or "no":

"Did the defendant commit the crime of First Degree Intentional Homicide while using a dangerous weapon?"

Answer: Yes.

Dated at Milwaukee, Wisconsin, this 27th day of February, 1997.

Michael J. Antony, foreperson.

Upon motion of the defense, court polled the jury as follows: "Was this and is this now your verdict?" To which each and every juror answered in the affirmative. Upon motion of the State, court enters judgment of conviction and finds the defendant guilty and further finds that the defendant is an habitual criminal. Defense motion for judgment notwithstanding the verdict denied by the court. Court orders that the defendant be remanded into the custody of the Sheriff's Department. Court orders a presentence report. Case continued to April 11, 1997 at 8:30 a.m. for presentence report and sentencing. mjs

Cu

April 11, 1997 Hon. Victor Manian Presiding, Branch 13

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor present in court for the State

Hattie Mitchell Reporter

Defense motion to adjourn granted by the court. Case continued to April 25, 1997 at 8:30 a.m. for sentencing. Same bail. mjs

Cu

Case No. F.96504

Page No. 8

SCI LIBRARY

April 25, 1997

Hon. Victor Manian Presiding, Branch 13

Defendant in court with Attorney Jean Kies

Assistant District Attorney William Molitor Present in court for the State

Hattie Mitchell Courtreporter

Sentencing proceeded. Statements made by the defendant and all parties. Court sentenced the defendant to the Wisconsin State Prisons for life, with credit for 195 days time served. Court sets the parole eligibility date at April 25, 2022. Court orders all applicable costs, Victim/Witness fee, restitution to victims and for Mr. Perkins funeral expenses, all to be paid from 25% of his prison pay. Court advised the defendant that as a convicted felon he may not possess a firearm and further finds that the defendant is an Habitual Criminal. Court advised the defendant of his appeal rights. Pretrial Incarceration Credit form and information on Postconviction Relief, filed. mjs

COMMITMENT ISSUED

DATA ENTERED
APR 28 1997
CLERK-FB

4-28-97

NOTICE OF INTENT TO PURSUE POSTCONVICTION RELIEF RECEIVED AND FILED THIS DATE.

OS

4-30-97

COPY OF NOTICE OF INTENT, JUDGMENT ROLL AND JUDGMENT OF CONVICTION SENT TO THE STATE PUBLIC DEFENDER'S OFFICE-MADISON.

OS

6.18.97

(DATE) ENTIRE COPY OF COURT FILE SENT TO

Joel Rosenthal (NAME)

mab

Page No.

Case No.

SCI LIBRARY COPY

Case No. F-96504

Page No. 9

6-26-97

CERTIFICATION OF TRANSCRIPT AND TRANSCRIPT OF PROCEEDINGS COMMENCING Scheduling

Conference 10-21-96

RECEIVED AND FILED. COPY OF TRANSCRIPT

FORWARDED TO Joel Rosenthal
OS

7-21-97

CERTIFICATION OF TRANSCRIPT AND TRANSCRIPT OF PROCEEDINGS COMMENCING 2-27-97

Jury Trial

RECEIVED AND FILED. COPY OF TRANSCRIPT

FORWARDED TO Joel Rosenthal
mf

10-15-97

CERTIFICATION OF TRANSCRIPT AND TRANSCRIPT OF PROCEEDINGS COMMENCING 10-8-96

Initial Appearance

RECEIVED AND FILED. COPY OF TRANSCRIPT

FORWARDED TO _____
mf

DATE WHEN COPY OF COURT FILE SENT

Page No. _____

Case No. _____

STATE OF WISCONSIN

CIRCUIT COURT
Branch 30

MILWAUKEE COUNTY

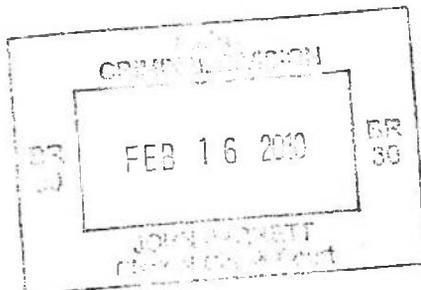
STATE OF WISCONSIN,

Plaintiff,

vs.

SEAN ROWELL,

Defendant.



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Case No. 96CF965047

**DECISION AND ORDER
DENYING MOTION FOR POSTCONVICTION RELIEF**

On February 2, 2010, the defendant filed a *pro se* motion for postconviction relief pursuant to section 974.06, Wis. Stats., seeking an evidentiary hearing and a release from custody. He was sentenced to life imprisonment on April 25, 1997 with a parole eligibility date of April 25, 2022 for first degree intentional homicide while using a dangerous weapon (habitual criminal). A prior postconviction motion was filed, followed by a notice of appeal. On September 28, 1999, the Court of Appeals affirmed the judgment of conviction and postconviction order. The case was assigned to this court as the successor to Judge Hansher's homicide calendar.

The defendant contends that the State failed to comply with sec. 971.01(1), Wis. Stats., which provides for the filing of an information following the preliminary hearing. The defendant apparently believes that the prosecutor could not have filed an information without first obtaining a transcript, i.e. the written testimony, of the preliminary hearing proceeding. Consequently, he concludes that the court lacked subject matter and personal jurisdiction. There is nothing in sec. 971.01 which requires a written transcript to be prepared prior to the filing of

an information. The defendant is evidently relying on the laws of 1875. The statute existing at the time he was charged supersedes the laws of 1875. His claim is completely without merit.

Moreover, State v. Escalona-Naranjo, 185 Wis.2d 169, 178 (1994), precludes the defendant from pursuing the current motion for postconviction relief. Section 974.06(4), Wis. Stats., requires a defendant to raise all grounds for postconviction relief in his original motion or appeal. Failure to do so precludes a defendant from raising additional issues, including claims of constitutional or jurisdictional violations, in a subsequent motion or appeal where those issues could have been raised previously. Escalona, supra.

THEREFORE, IT IS HEREBY ORDERED that the defendant's motion for postconviction relief is **DENIED**.

Dated this 16 day of February, 2010, at Milwaukee, Wisconsin.

BY THE COURT:



Jeffrey A. Conen

Jeffrey A. Conen
Circuit Court Judge

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP767

Cir. Ct. No. 1996CF965047

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SEAN FITZGERALD ROWELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. CONEN, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Sean Fitzgerald Rowell, *pro se*, appeals from an order denying his postconviction motion. Rowell argues that his 1997 conviction for first-degree intentional homicide should be vacated because the prosecutor filed the information at the conclusion of the preliminary examination, without

having first ordered a written transcript of the preliminary examination. We affirm on both procedural and substantive grounds.

¶2 Rowell was charged with first-degree intentional homicide in connection with the 1996 shooting of Christopher Perkins. At the conclusion of the preliminary examination, the trial court bound Rowell over for trial. The prosecutor then immediately filed an information, which Rowell's lawyer acknowledged receiving. The case was tried to a jury and Rowell was found guilty.

¶3 Rowell was sentenced to life imprisonment, with a parole eligibility date of April 25, 2022. He appealed and we affirmed his conviction, rejecting his claim that he was entitled to a new trial based on the trial court's failure to remove a juror for cause and based on newly discovered evidence. *See State v. Rowell*, No. 98-1354-CR, unpublished slip op. (Wis. Ct. App. Sept. 28, 1999).

¶4 Ten years later, in February 2010, Rowell filed a *pro se* postconviction motion in Milwaukee County Circuit Court. He alleged that his conviction was unlawful because the trial court lost jurisdiction when the district attorney filed the information at the conclusion of the preliminary examination without having first reviewed a transcript of the preliminary examination. The circuit court denied Rowell's motion, without a hearing, on both procedural and substantive grounds. Specifically, it concluded that Rowell's claim was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and that there is nothing in WIS. STAT. § 971.01 (2007-08) that

requires that a transcript be prepared prior to the filing of the information.¹ This appeal follows.

¶5 We agree with the circuit court's analysis. First, Rowell's claim is procedurally barred. A defendant cannot raise an argument in a subsequent postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Escalona-Naranjo*, 185 Wis. 2d at 181–182, 517 N.W.2d at 162. Rowell's 2010 postconviction motion offered no explanation, much less a sufficient reason, why he did not raise this issue in the postconviction motion he filed as part of his direct appeal or in his direct appeal.² Therefore, his claim is procedurally barred. *See State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 22, 665 N.W.2d 756, 766 (“[C]laims that could have been raised on direct appeal ... are barred from being raised in a subsequent § 974.06 postconviction motion absent a showing of a sufficient reason for why the claims were not raised on direct appeal or in a previous § 974.06 motion.”).

¶6 We also agree with the circuit court that Rowell's motion is substantively without merit. The relevant statute, WIS. STAT. § 971.01(1), provides:

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² On appeal, Rowell argues that his claim should not be procedurally barred for a variety of reasons. Rowell's allegation of a sufficient reason to overcome the procedural bar must be alleged in the postconviction motion itself, not for the first time on appeal. *See State v. Schulpius*, 2006 WI 1, ¶26, 287 Wis. 2d 44, 59, 707 N.W.2d 495, 502 (we generally do not review an issue raised for the first time on appeal). Therefore, we do not discuss the reasons he has offered on appeal.

The district attorney shall examine all facts and circumstances connected with any preliminary examination touching the commission of any crime if the defendant has been bound over for trial and, subject to s. 970.03(10), shall file an information according to the evidence on such examination subscribing his or her name thereto.^{3]}

There is nothing in this statute that requires the district attorney to order and review a written transcript prior to filing an information. Indeed, WIS. STAT. § 970.05 provides that the preliminary examination “*shall be transcribed if requested*” and contemplates that such a request can be made by the district attorney, the defendant or the judge. *See ibid.* The plain language of § 971.01 does not support Rowell’s motion for postconviction relief. *See Pasko v. City of Milwaukee*, 2002 WI 33, ¶26, 252 Wis. 2d 1, 20–21, 643 N.W.2d 72, 81 (“When interpreting a statute, we look to the plain language. If we can determine the meaning of the statute based on its plain language, we need not look any further.”) (citation omitted).

¶7 Rowell’s argument that a transcript is required appears to be based on case law quoting a prior version of WIS. STAT. § 971.01. In *Mark v. State*, 228 Wis. 377, 280 N.W. 299 (1938), the court discussed WIS. STAT. § 355.17 (1937), which provided in relevant part:

The district attorney of the proper county shall inquire into and make full examination of all facts and circumstances connected with any case of preliminary examination as provided by law, touching the commission of any offense whereon the offender shall have been committed to jail, become recognized or held to bail, and file an information setting forth the crime committed, according to the facts ascertained on such examination *and from the written*

³ The current language of this statute is the same as it was in 1996, when Rowell’s preliminary examination was conducted.

testimony taken thereon, whether it be the offense charged in the complaint on which the examination was had or not.

Mark, 228 Wis. at 383, 280 N.W. at 302 (quoting § 355.17). Rowell suggests that the phrase “written testimony taken thereon” in § 355.17 imposed on district attorneys a duty to review a transcript prior to filing an information. We are aware of no case holding that. Moreover, the language “written testimony taken thereon” was removed from the statute decades before Rowell’s crime was committed. We reject Rowell’s argument.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.



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WISCONSIN COURT OF APPEALS

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DISTRICT I

January 4, 2011

To:

The Honorable Jeffrey A. Conen
Circuit Court Judge
Safety Building
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Milwaukee, WI 53233

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Clerk of Circuit Court
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Sean Fitzgerald Rowell 255649
Stanley Corr. Inst.
100 Corrections Drive
Stanley, WI 54768

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

2010AP767

State of Wisconsin v. Sean Fitzgerald Rowell
(L.C. # 1996CF965047)

Before Fine, Kessler and Brennan, JJ.

Defendant-appellant Sean Fitzgerald Rowell moves for reconsideration of our decision of December 14, 2010. After reviewing the motion, we conclude that reconsideration is not warranted.

Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

A. John Voelker
Acting Clerk of Court of Appeals