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DISTRICT I

October 25, 2022

To:

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Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
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John D. Flynn
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1207 State of Wisconsin v. Ronald Marion Carpenter
(L.C. # 2007CF5359)

Before Brash, C.J., Dugan and White, 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 Marion Carpenter appeals orders denying his postconviction motion and the reconsideration motion that followed. Carpenter argues that he is entitled a new trial in the interest of justice because the real controversy in this matter was not fully tried due to the ineffective assistance he received from trial counsel. 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) (2019-20).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

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In 2008, Carpenter was convicted, following a jury trial, of kidnapping, false imprisonment, four counts of second-degree sexual assault by use of force, and four counts of first-degree sexual assault as a party to the crimes. Since that time, Carpenter has filed numerous postconviction motions and has had two prior appeals.

On direct appeal, this court affirmed his convictions. *See* ***State v. Carpenter***, No. 2009AP2496-CR, unpublished slip op. (WI App Apr. 13, 2011). The Wisconsin Supreme Court denied his petition for review.

Next, Carpenter, *pro se*, filed a WIS. STAT. § 974.06 motion for a new trial alleging that his postconviction counsel was ineffective for not arguing that his trial counsel was ineffective. According to Carpenter, trial counsel was ineffective for not investigating and impeaching the victim with prior untruthful allegations of sexual assault, which were detailed in a statement the victim's mother made to police, and for not securing the victim's mental health records. The circuit court denied Carpenter's motion, and he did not appeal the decision.

Nearly six years later, Carpenter filed a second *pro se* postconviction motion, this time seeking sentence modification. The circuit court denied Carpenter's motion, explaining that he had not set forth a new factor of any kind so as to warrant sentence modification. The circuit court additionally explained that even if it were to liberally construe Carpenter's motion as one for a new trial under WIS. STAT. § 974.06, his claims were procedurally barred.

Then Carpenter, *pro se*, filed a motion seeking a ***Machner*** hearing and a motion to supplement the record for appeal.[2] The circuit court denied this motion, and Carpenter appealed. We affirmed. *See* ***State v. Carpenter***, No. 2017AP1834, unpublished op. and order (WI App Dec. 18, 2018). In our decision, we held—among other things—that Carpenter was not entitled to a new trial in the interest of justice. *See* ***id.***, No. 2017AP1834, at 8. Carpenter claimed that he was entitled to a new trial because the jury did not hear about the statement the victim's mother made to police or hear her testify. We deemed the argument undeveloped. ***Id.***, No. 2017AP1834, at 9.

In 2020, Carpenter filed a letter asking the circuit court to examine what he characterized as newly discovered evidence impeaching the victim's credibility. With his filing, Carpenter submitted notes that he purportedly discovered in 2019 when he received them from the attorney who represented him in federal habeas litigation. The notes related the victim's mental health history and allegations of rape, among other thing.

The circuit court denied Carpenter's motion after concluding that he had not set forth a viable claim for relief. Carpenter moved the circuit court to reconsider. In its decision denying the motion for reconsideration, the circuit court explained:

> While the defendant claims that the new information he learned about his victim since his trial constitutes newly discovered evidence, it does not.... [T]he defendant already litigated issues regarding his attorney's failure to investigate and present impeachment evidence regarding the victim's prior untruthful allegations and mental health in his first postconviction motion. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990[, 473 N.W.2d 512] (Ct. App. 1991) (defendant may not relitigate or

[2] *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

> reformulate claims decided in a previous postconviction challenge).

This appeal follows. Carpenter attempts to recharacterize his newly discovered evidence claim by asserting that he is entitled to a new trial in the interest of justice because the jury did not hear testimony that the victim had a history of making sexual assault allegations that were investigated and determined to be baseless. He contends that trial counsel's ineffectiveness kept the real controversy from being fully tried.

We adopt the circuit court's decision denying Carpenter's reconsideration motion, and conclude that despite the interest-of-justice label, Carpenter is simply relitigating his ineffective assistance claim. *See* WIS. CT. APP. IOP VI(5)(a) (Nov. 30, 2009) ("When the [circuit] court's decision was based upon a written opinion ... that adequately express[es] the panel's view of the law, the panel may incorporate the [circuit] court's opinion ... or make reference thereto, and affirm on the basis of that opinion."); *see also* ***State v. Crockett***, 2001 WI App 235, ¶15, 248 Wis. 2d 120, 635 N.W.2d 673 ("Rephrasing the same issue in slightly different terms does not create a new issue."). Carpenter cannot simply recharacterize previous ineffective counsel claims in a neverending series of attempts to obtain a new trial. Our discretionary reversal power under WIS. STAT. § 752.35 is to be exercised only in exceptional cases. *See* ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60. This is not one. Therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

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Supreme Court of Wisconsin

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February 21, 2023

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

No. 2020AP1207 State v. Carpenter, L.C. #2007CF5359

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Ronald Marion Carpenter, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

REBECCA FRANK DALLET, J., did not participate.

Sheila T. Reiff
Clerk of Supreme Court

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Additional material from this filing is available in the Clerk's Office.