

APPENDIX TO WRIT OF CERTIORARI

- A. MICHAEL MOFFETT V. MICHAEL MEISNER
- B. MICHAEL MOFFETT V. RADTKE
- C. STATE V. MOFFETT, 2023Ap2104(SSC)
- D. STATE V. MOFFETT, (WCOA)
- E. STATE V. MOFFETT (reconsideration)
- F. STATE V. MOFFETT, (NOJ)
- G. STATE V. MOFFETT, (Circuit court)
- H. STATE V. MOFFETT, (reconsideration).

*January 2nd, 2024*  
*Michael Moffett*

FILED  
07-18-2023  
Sheboygan County  
Clerk of Circuit Court  
2009CF000143

BY THE COURT:

DATE SIGNED: July 18, 2023

Electronically signed by Kent Hoffmann  
Circuit Court Judge

STATE OF WISCONSIN : CIRCUIT COURT : SHEBOYGAN COUNTY

---

STATE OF WISCONSIN,

v.

Case No. 2009 CF 143

MICHAEL M. MOFFETT,

Defendant.

---

MEMORANDUM DECISION AND ORDER DENYING MOTION FOR  
POSTCONVICTION RELIEF

---

The defendant in this action has submitted yet another motion for post-conviction relief on June 21, 2023. In this new motion, the defendant asserts that his argument of self-defense was improperly presented to the court and jury at his homicide trial. In a second argument, the defendant addresses issues previously considered and rejected by the circuit court, the Court of Appeals and the Wisconsin Supreme Court.

In his previously filed and considered post conviction motions, the defendant has argued issues addressing the inadequate presentation of evidence regarding his claim of self defense in this matter. ~~However, in this filing, the defendant asserts that two~~

~~different witnesses who testified against him at trial have recently recanted their previous testimony and statements, supporting his claim to self-defense.~~

The Court of Appeals, in its October 6, 2021, decision addressing the defendant's prior motion accurately set forth the standards for raising new claims of error in subsequent motions for post-conviction relief:

“We need finality in our litigation.” State v. Escalona-Naranjo, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, any claim that could have been raised in a prior postconviction motion or direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. Escalona-Naranjo, 185 Wis. 2d at 185.

In this matter, the defendant offers no reasons as to why the witnesses could not have come forward with their recantations during the filing of the numerous post conviction motions by the defendant. Furthermore, the affidavits are submitted by two witnesses, one of whom admits that her memory of that time is not clear and the other who has changed his statements regarding the facts of this case numerous times since the investigation into this criminal incident began.

The defendant relies on one affidavit to prove that a gun was present in the victim's car during the time that the crime is alleged to have occurred. However, the defendant offers no other evidence of record to support such a claim. The defendant provides no evidence that a gun was found in the victim's car at any time during this investigation or any time subsequent to the trial. The defendant relies solely on the unsupported statement of a recanting witness. This evidence is insufficient to support the defendant's claims for relief.

A defendant must present a sufficient reason as to why evidence was not submitted in previous postconviction motions before the court will consider the arguments presented. The defendant offers no sufficient reason as to why the late recantations of testimony by witnesses whose statements have no indicia of reliability and claims unsupported by independent evidence of record were not set forth in his numerous earlier filings. As such, these issues are precluded by per the ruling in *Escalona-Naranjo, supra*.

The second section of his motion is titled, "Below The Second Portion of the Postconviction Contain [sic] Issues That Were Previously Raised In Prior Motion [sic]". By the very title, the defendant admits that these issues were previously considered and denied by the circuit and appellate courts. Again, the court of appeals addressed this issue in their decision on the defendant's last post-conviction motion:

"...[A] defendant may not relitigate a matter previously litigated, "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)"

As such, the arguments in the second section of the brief will not be considered by this court.

FOR THE FORGOING REASONS, THE MOTION OF THE DEFENDANT IS  
DENIED IN ITS ENTIRETY.

**NATASHA L. TORRY**  
CIRCUIT COURT JUDGE

---

Circuit Court Branch 2  
615 N Sixth Street  
Sheboygan WI 53081  
(920) 459-3085

October 19, 2023

Mr. Michael M. Moffett #384291  
c/o Fox Lake Correctional  
PO Box 200  
Fox Lake, WI 53933-0147

Re: 09CF143 – State of Wisconsin vs. Michael M. Moffett

Dear Mr. Moffett:

I have received your motion for reconsideration that was filed with the court on August 3, 2023. You have not raised any new information that has not already been considered and addressed by the Court. Your request is hereby denied.

Sincerely,

  
Hon. Natasha Torry  
Circuit Court Branch 2  
Sheboygan County

cc: District Attorney's Office (via efile)



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](http://www.wicourts.gov)

**DISTRICT II**

December 11, 2023

To:

Jennifer L. Vandermeuse  
Electronic Notice

Michael M. Moffett 384291  
Fox Lake Correctional Inst.  
P.O. Box 200  
Fox Lake, WI 53933-0200

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

---

2023AP2104

State of Wisconsin v. Michael M. Moffett (L.C. # 2009CF143)

Before Gundrum, P.J.

On November 6, 2023, Michael M. Moffett filed a pro se notice of appeal from a July 18, 2023 order denying his WIS. STAT. § 974.06 motion for postconviction relief and from an October 19, 2023 order denying his motion for reconsideration. This court has an independent duty to determine if we have jurisdiction over the appeal. *See Carla B. v. Timothy N.*, 228 Wis. 2d 695, 698, 598 N.W.2d 924 (Ct. App. 1999). We have therefore reviewed the appellate record that was transmitted to this court. For reasons explained below, we conclude that we lack jurisdiction over the July 18, 2023 order and that the parties should address as the first issue in their appellate briefs whether we have jurisdiction over the October 19, 2023 order.

The record reflects that on July 18, 2023, the circuit court denied Moffett's pro se WIS. STAT. § 974.06 motion without a hearing. On August 3, 2023, Moffett filed a motion for reconsideration. On October 19, 2023, the circuit court entered an order denying the motion for reconsideration. On November 6, 2023, Moffett filed his notice of appeal.

The July 18, 2023 order was a final order from which an appeal as of right could be taken. *See* WIS. STAT. § 808.03(1). The underlying matter is civil in nature, *see* § 974.06(6), and the ninety-day appeal period in WIS. STAT. § 808.04(1) applied, *see* § 974.06(7). Although Moffett moved for reconsideration, the motion did not affect the time for appealing because it was not filed after a trial to the court or other evidentiary hearing. *See* WIS. STAT. § 805.17(3); *Continental Cas. Co. v. Milwaukee Metro. Sewerage Dist.*, 175 Wis.2d 527, 533-35, 499 N.W.2d 282 (Ct. App. 1993). Because the notice of appeal was filed more than ninety days after entry of the July 18, 2023 order, this court lacks jurisdiction to review that order.<sup>1</sup> *See* WIS. STAT. RULE 809.10(1)(e).

Next, we turn to the October 19, 2023 order denying Moffett's motion for reconsideration. The notice of appeal is timely as to that order. However, an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a motion for reconsideration not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 197 N.W.2d 752 (1972). It is unclear from the record before us whether the motion for reconsideration that was denied in the October 19, 2023 order presented issues that could have been raised in an appeal from the July 18, 2023 order. We conclude that

---

<sup>1</sup> This court has considered whether Moffett's notice of appeal could be considered timely as to the July 18, 2023 order pursuant to the prison mailbox tolling rule. Under that rule, the time period for filing documents may be tolled when pro se prisoners deliver their submissions to the proper prison authorities for mailing. *See State ex rel. Kelley v. State*, 2003 WI App 81, ¶¶3, 5, 261 Wis. 2d 803, 661 N.W.2d 854. Here, Moffett's notice of appeal indicates that he signed it on October 29, 2023, which was 103 days after the July 18, 2023 order was entered. Thus, when Moffett signed the notice of appeal, it was already late as to the July order. Therefore, the prison mailbox tolling rule would not give this court jurisdiction over the July order.

the parties should address that threshold jurisdictional issue as the first issue in their appellate briefs.

Therefore,

IT IS ORDERED that this court lacks jurisdiction to review the circuit court's July 18, 2023 order.

IT IS FURTHER ORDERED that the parties shall address, as the first issue in their appellate briefs, whether this court has jurisdiction to review the October 19, 2023 circuit court order denying the appellant's motion for reconsideration.

---

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



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](http://www.wicourts.gov)

**DISTRICT II**

February 5, 2025

To:

Hon. Natasha L. Torry  
Circuit Court Judge  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Michael M. Moffett #384291  
Fox Lake Correctional Institution  
P.O. Box 147  
Fox Lake, WI 53933

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

---

2023AP2104

State of Wisconsin v. Michael M. Moffett (L.C. #2009CF143)

Before Gundrum, P.J., Neubauer and Lazar, 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).**

Moffett appeals from an order denying his motion for reconsideration of an order denying his most recent WIS. STAT. § 974.06 (2021-22)<sup>1</sup> motion. On appeal, Moffett argues he is entitled to reconsideration because the circuit court applied the wrong legal standard to issues he raised in his § 974.06 motion. 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.

---

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

Moffett was convicted, following a jury trial, of first-degree intentional homicide. He has had a direct appeal and three subsequent pro se appeals. See *State v. Moffett*, No. 2011AP1290, unpublished op. and order (WI App Feb. 15, 2012); *State v. Moffett*, No. 2012AP2564, unpublished op. and order (WI App June 5, 2013); *State v. Moffett*, No. 2013AP2187, unpublished slip. op. (WI App Sept. 10, 2014); *State v. Moffett*, No. 2019AP1973, unpublished op. and order (WI App Oct. 6, 2021).

In June 2023, Moffett filed the postconviction motion underlying the present appeal. In his motion, he argued he was entitled to an evidentiary hearing on his claim that “newly discovered [evidence] warrants a new trial.” He attached to his motion, an affidavit from trial witness Kerry Bohannon who averred that, contrary to his trial testimony, the victim did possess a gun during the shooting; after the shooting Bohannon took the gun from the victim and sold it for drugs, and Bohannon testified at trial the victim *did not* possess a gun during the shooting because a detective had the witness “do it as he wanted.” Moffett also attached an affidavit from defense trial witness Christylee Broehm<sup>2</sup> who averred that she “d[id]n’t remember everything” but, contrary to her trial testimony, the victim “never pulled a gun out on me” and she only testified he did because Moffett’s trial counsel wanted her to do so. The second half of Moffett’s postconviction motion included a section titled, “Below the second portion of this postconviction motion contains issues that were previously raised in prior motion.” (Capitalization omitted.) In that section, Moffett acknowledged that he previously raised these issues in an earlier postconviction motion.

---

<sup>2</sup> At the time of trial, Broehm’s name was Christylee Nohelty.

The circuit court denied Moffett's motion. With respect to the newly-discovered evidence issue, the court determined the recanting witnesses' statements had "no indicia of reliability." The court found Bohannon "changed his statements regarding the facts of this case numerous times since the investigation into this criminal incident began" and Broehm admitted "her memory of that time is not clear." The court observed that Moffett was relying on Bohannon's recantation to support his claim of self-defense and his assertion that a gun was present in the victim's car during this crime; however, the court determined Moffett "offer[ed] no other evidence of record to support such a claim" and the "unsupported statement of a recanting witness ... [was] insufficient to support the defendant's claims for relief." The court also found that Moffett offered no sufficient reason as to why the witnesses' late recantations ~~were not argued in previous postconviction motions.~~ As a result, the court determined "these ~~issues are precluded by ... the ruling in [State v.] Escalona-Naranjo, [185 Wis. 2d 168, 517 N.W.2d 157 (1994)].~~"

As to Moffett's second argument—that the circuit court should revisit issues he previously raised, the postconviction court determined, "[b]y the very title, [Moffett] admits that these issues were previously considered and denied by the circuit and appellate courts." The court relied on a quotation from our last decision involving Moffett where we stated: "[A] defendant may not relitigate a matter previously litigated, 'no matter how artfully the defendant may rephrase the issue.'" *Moffett*, No. 2019AP1973, unpublished op. and order at 2 (quoting *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Relying on *Witkowski*, the court did not consider the arguments in that section of Moffett's postconviction motion.

Moffett moved for reconsideration. He argued that the postconviction court applied an “incorrect standard of law” when it denied his motion. He also admitted that, with respect to the second portion of his postconviction motion, he was attempting to relitigate prior issues because they had been inadequately raised earlier. The circuit court denied his motion for reconsideration, concluding that Moffett did not raise “any new information that has not already been considered and addressed by the [c]ourt.” Moffett then appealed both orders.

On appeal, and by order dated December 11, 2023, we determined we lacked jurisdiction over an appeal from the circuit court order denying Moffett’s WIS. STAT. § 974.06 motion because Moffett’s notice of appeal was not timely filed. As for the order denying Moffett’s motion for reconsideration, we determined the notice of appeal was timely filed. However, we noted

an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a motion for reconsideration not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 197 N.W.2d 752 (1972).

Because we could not determine from the record whether the order denying the motion for reconsideration presented issues that could have been raised in an appeal from the postconviction order, we directed the parties to address the threshold jurisdictional issue as the “first issue in their appellate briefs.” Neither party has directly addressed this jurisdictional question. We will therefore assume without deciding that we have jurisdiction over the order denying the motion for reconsideration.

“To prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact.” *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853. We review a circuit court’s decision on a motion for reconsideration under the erroneous exercise of discretion standard. *Id.*, ¶6. We can also affirm on different grounds than those relied on by the circuit court. See *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987) (where the circuit court’s decision is correct, we may affirm on grounds not utilized by that court).

On appeal, Moffett first argues the circuit court erroneously exercised its discretion when denying his reconsideration motion because the court applied the “wrong standard of law.” We disagree. To overcome *Escalona-Naranjo*’s procedural bar and receive a new trial based on allegations of newly-discovered evidence, “a defendant must establish by clear and convincing evidence that ‘(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking [the] evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.’” *State v. Edmunds*, 2008 WI App 33, ¶13, 308 Wis. 2d 374, 746 N.W.2d 590 (citation omitted). “Once those four criteria have been established, the court looks to ‘whether a reasonable probability exists that a different result would be reached in a [new] trial.’” *Id.* (citation omitted). Further, “[a] claim of newly discovered evidence that is based on recantation also requires corroboration of the recantation with additional newly discovered evidence.” *State v. McAlister*, 2018 WI 34, ¶33, 380 Wis. 2d 684, 911 N.W.2d 77. “[C]orroboration requires newly discovered evidence that ‘(1) there is a feasible motive for the initial false statement; and, (2) there are circumstantial guarantees of the trustworthiness of the recantation.’” *Id.* (citation omitted).

Here, among other reasons, the circuit court determined Moffett did not provide additional newly-discovered evidence to corroborate the two recantations he offered. *See McAlister*, 380 Wis. 2d 684, ¶33. It denied Moffett's postconviction motion as to the newly-discovered evidence. When Moffett moved for reconsideration of that order on the basis that the circuit court applied an "incorrect standard of law," the court appropriately denied Moffett's motion. We agree he failed to establish the circuit court committed a "manifest error of law." *See Koepsell's*, 275 Wis. 2d 397, ¶44.

As for Moffett's assertions regarding the issues he raised in previous postconviction motions, Moffett argued in his reconsideration motion that the circuit court's application of *Witkowski* was "the incorrect standard of law" because he was entitled to have issues revisited that were initially "inadequately raised." We disagree. *Witkowski* explicitly prohibits Moffett from renewing claims he previously made. The circuit court appropriately denied Moffett's motion for reconsideration because he again failed to establish the court committed a "manifest error of law." *See Koepsell's*, 275 Wis. 2d 397, ¶44.

Finally, Moffett argues we should, in our discretion, reverse his conviction and order a new trial in the interest of justice. *See State v. Avery*, 2013 WI 13, ¶23, 345 Wis. 2d 407, 826 N.W.2d 60 (We have "the discretionary power to reverse a conviction in the interest of justice."). Moffett raises many reasons why he believes we should grant him a new trial in the interests of justice. However, Moffett's claims are simply a rehash of prior grounds seeking a new trial that we have already rejected. *See State v. Arredondo*, 2004 WI App 7, ¶56, 269 Wis. 2d 369, 674 N.W.2d 647. We conclude Moffett has not demonstrated that this is an exceptional case that warrants discretionary reversal.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. § 809.21.

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

---

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



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](http://www.wicourts.gov)

**DISTRICT II**

March 5, 2025

To:

Hon. Natasha L. Torry  
Circuit Court Judge  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Michael M. Moffett 384291  
Fox Lake Correctional Institution  
P.O. Box 147  
Fox Lake, WI 53933

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

---

2023AP2104

State of Wisconsin v. Michael M. Moffett (L.C. # 2009CF143)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

The pro se appellant moves for reconsideration of the opinion entered February 5, 2025. WIS. STAT. RULE 809.24(1). The motion does not persuade us that reconsideration is warranted. Therefore,

IT IS ORDERED that the motion for reconsideration is denied. WIS. STAT. RULE 809.24(2).

---

*Samuel A. Christensen*  
Clerk of Court of Appeals



OFFICE OF THE CLERK

# Supreme Court of Wisconsin

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WI 53701-1688

TELEPHONE (608) 266-1880

FACSIMILE (608) 267-0640

Web Site: [www.wicourts.gov](http://www.wicourts.gov)

June 25, 2025

To:

Hon. Natasha L. Torry  
Circuit Court Judge  
Electronic Notice

Michael M. Moffett 384291  
Fox Lake Correctional Institution  
P.O. Box 147  
Fox Lake, WI 53933

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Sara Lynn Shaeffer  
Electronic Notice

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

---

No. 2023AP2104

State v. Moffett, L.C.#2009CF143

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Michael M. Moffett, pro se, and considered by this court;

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

---

Samuel A. Christensen  
Clerk of Supreme Court

MICHAEL M. MOFFETT #384291  
FOX LAKE CORRECTIONAL INST.  
W1237 LAKE EMILY RD.

JANUARY 2<sup>ND</sup>, 2026

/s/ Michael Moffett