

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 2012

Diane M. Fremgen
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. 2012AP113

Cir. Ct. No. 2004CF19

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC W. POIRIER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Chippewa County: RODERICK A. CAMERON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Eric Poirier, pro se, appeals a judgment convicting him of six crimes and an order denying his motion for postconviction relief. Poirier argues his convictions were multiplicitous and therefore violated his

constitutional right to be free from double jeopardy. He also argues the circuit court erred by denying his postconviction motion without a hearing. We conclude Poirier's double jeopardy argument is procedurally barred. Consequently, the court properly denied his motion without a hearing, and we affirm.

BACKGROUND

¶2 On April 22, 2004, a jury convicted Poirier of the following crimes, each as a repeater: (1) attempted first-degree intentional homicide; (2) possession of a firearm by a felon; (3) operating a motor vehicle without the owner's consent; (4) burglary of a building or dwelling; (5) aggravated battery; and (6) first-degree reckless injury. The circuit court imposed concurrent sentences totaling forty years' initial confinement and twenty years' extended supervision.

¶3 On November 24, 2004, Poirier filed a "Motion for an Arresting Judgment," in which he alleged ineffective assistance of trial counsel, newly discovered evidence, and prosecutorial misconduct. The circuit court denied Poirier's motion following an evidentiary hearing. Poirier then filed various pleadings in the Wisconsin Supreme Court, including a petition for bypass and a petition for a writ of habeas corpus. The supreme court dismissed all of these pleadings, and later denied Poirier's reconsideration motion.

¶4 On September 8, 2005, Poirier filed a motion for sentence credit and waiver of DNA surcharge, which the circuit court denied. On December 13, 2005, we denied Poirier's motion to extend the time for filing a notice of intent to seek postconviction relief. Poirier then filed in the circuit court a notice of intent to seek postconviction relief and a motion for extension of time for filing the same. The circuit court denied Poirier's motion, citing our December 13, 2005 order.

¶5 On February 14, 2006, Poirier filed a postconviction motion challenging the jury instructions used during his trial. The circuit court denied the motion, ruling that Poirier’s claim appeared “wholly without merit” and that Poirier could have raised his jury instruction challenge in one of his previous postconviction motions.

¶6 On August 30, 2007, Poirier filed another postconviction motion, this time asserting ineffective assistance of trial counsel, prosecutorial misconduct, police misconduct, and several other errors, including a double jeopardy violation. The circuit court ruled Poirier’s motion was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and we summarily affirmed the court’s order.

¶7 Poirier subsequently filed a motion to vacate DNA surcharge, a petition for a writ of coram nobis, a petition for a writ of mandamus, and a “Writ for Bill of Attainder,” all of which were denied. Poirier then filed a petition for a “Writ of Malum Prohibitum,” alleging that he was subjected to double jeopardy because he was convicted of multiple charges for what he considered to be a single criminal act. The circuit court denied Poirier’s petition, ruling that it merely repackaged arguments the court had previously rejected.

¶8 On January 12, 2011, Poirier filed a “Motion in the Interest of Justice Pursuant to § 805.15(1), Wis. Stats.[.]” asking the circuit court to void five of his sentences. The court denied Poirier’s motion, again noting that it raised no

new issues. We summarily affirmed the circuit court's order, concluding Poirier's motion was procedurally barred.¹

¶9 On December 22, 2011, Poirier filed a "Motion to Vacate Sentence," arguing his convictions were multiplicitous and violated his right to be free from double jeopardy. The circuit court denied Poirier's motion without a hearing, noting that his multiplicity argument "[had] been presented before without success." Poirier now appeals.

DISCUSSION

¶10 We conclude the circuit court properly denied Poirier's most recent postconviction motion for two reasons. First, the motion merely repackaged arguments previously raised in three of Poirier's previous postconviction motions, which asserted Poirier's convictions were multiplicitous and violated double jeopardy. "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).

¶11 Second, to the extent Poirier's most recent postconviction motion raised any new issues, the motion failed to establish good cause for Poirier's failure to have raised the issues in his earlier postconviction motions. Claims that could have been raised in an earlier postconviction motion are procedurally barred,

¹ We also concluded Poirier's appeal was frivolous and imposed *Casteel* conditions on any future filings by Poirier. See *State v. Casteel*, 2001 WI App 188, ¶25, 247 Wis. 2d 451, 634 N.W.2d 338. However, because our order imposing *Casteel* conditions was entered on January 31, 2012 and Poirier's notice of appeal in the instant appeal was filed on January 13, 2012, the State concedes our order imposing *Casteel* conditions is inapplicable to this appeal.

unless the defendant articulates a sufficient reason for failing to raise them in the earlier motion. *See Escalona-Naranjo*, 185 Wis. 2d at 184-85. Poirier has failed to articulate any reason, let alone a sufficient reason, for failing to raise any new claims in his previous postconviction motions.

¶12 Finally, although Poirier asserts he was entitled to a hearing on his latest postconviction motion, he is mistaken. A circuit court has discretion to deny a postconviction motion without an evidentiary hearing “if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief.” *See State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. Here, the record conclusively demonstrates that the claims raised in Poirier’s latest postconviction motion are procedurally barred. As a result, the circuit court properly exercised its discretion by denying Poirier’s motion without a hearing.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).

