

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 13, 2013

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. 2012AP2617-CR

Cir. Ct. No. 2009CF95

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES DEAN GLEASON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marinette County:
JAMES A. MORRISON, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Charles Gleason appeals an order denying his motion for “modification of sentence or resentencing.” Because Gleason’s arguments have either already been litigated or are procedurally barred, we affirm the order.

BACKGROUND

¶2 The State charged Gleason with burglary of a Crivitz tavern, criminal damage to property and misdemeanor theft, all counts as a repeater. Gleason ultimately pleaded no contest to burglary. The parties jointly recommended a four and one-half-year sentence consisting of eighteen months' initial confinement and three years' extended supervision. The court rejected the joint recommendation and imposed a ten-year sentence consisting of six years' initial confinement and four years' extended supervision, to be served consecutive to an existing sentence imposed after the revocation of Gleason's probation in a separate case. The court concluded a "significant" period of incarceration was warranted in light of Gleason's "very extensive prior record of burglary and robbery," and determined such a sentence would protect the community and deter similar criminal conduct.

¶3 Gleason filed a motion for sentence modification, alleging the court failed to consider that he was off of his medication for schizophrenia at the time of the offense, and that he likely would not have committed the offense had he been taking his medication. The court denied Gleason's motion after a hearing and Gleason appealed. That appeal, however, was dismissed for Gleason's failure to file a brief.

¶4 Gleason filed a second postconviction motion, claiming the circuit court erroneously exercised its discretion by rejecting the parties' joint recommendation. Gleason asked the court to reduce his sentence and declare him eligible for the earned release program. The court denied the motion, noting it was not bound by the parties' joint recommendation. Gleason did not appeal that order.

¶5 In a third postconviction motion, Gleason asked to withdraw his no contest plea and, alternatively, moved for sentence modification. Gleason claimed, among other things, that the circuit court relied on inaccurate information contained in the presentence investigation report (PSI). Specifically, Gleason challenged the court's statements about him stealing to supplement his disability income. The PSI author noted: "Mr. Gleason has a long history of similar behavior all because he wants more money than he gets for his disability." Gleason claimed this information was inaccurate because he did not start receiving disability payments until 2008 and was not yet on disability when he committed his previous robberies. The circuit court denied this motion and Gleason did not appeal.

¶6 In a fourth postconviction motion, Gleason sought to withdraw his no contest plea because his trial counsel was ineffective by advising Gleason to enter into a plea agreement. The circuit court denied Gleason's motion, concluding his claims were either already adjudicated or procedurally barred. Gleason did not appeal.

¶7 Gleason then filed the underlying postconviction motion, seeking "modification of sentence or resentencing" on the ground that the court relied on inaccurate information in the PSI—specifically, the PSI author's statement that Gleason has a "long history of criminal behavior all because he wants more money than he gets for his disability." The motion attempted to frame the alleged inaccurate information as a new factor justifying sentence modification. The circuit court denied this fifth postconviction motion, concluding the alleged inaccuracies were known by the court at sentencing and, thus, were not new factors. This appeal follows.

DISCUSSION

¶8 Gleason renews his “new factor”/inaccurate information claim, arguing the PSI was inaccurate because he did not begin receiving disability payments until 2008 and was not receiving disability payments when he committed the previous robberies. This argument, however, was raised in Gleason’s third postconviction motion and rejected by the circuit court. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

¶9 Moreover, successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why newly alleged errors were not previously raised. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). The motion intimates that Gleason could not have raised his argument in the original postconviction motion because the court was never “made aware of this inaccurate information.” For the first time on appeal, Gleason contends his trial counsel was ineffective by failing to adequately review the PSI with Gleason prior to sentencing, thus depriving Gleason of the ability to identify the inaccurate information for the court. This court declines to consider issues raised for the first time on appeal. *See Terpstra v. Soiltest, Inc.*, 63 Wis. 2d 585, 593, 218 N.W.2d 129 (1974).

¶10 Even assuming Gleason’s motion had properly alleged the ineffective assistance of trial counsel as a sufficient reason for failing to raise his PSI argument in the original postconviction motion, this purported explanation ignores the fact that the argument was raised and rejected in his third

postconviction motion. Because Gleason's claims were either already litigated or are procedurally barred, the circuit court properly denied the motion.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

