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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III
Case No. 2022AP263-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT E. HAMMERSLEY,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

On Appeal from an Order Denying a Petition for John Doe
Investigation, an Order Denying a Motion for
Reconsideration of the Denial, and Failure to Act Upon a
Wis. Stat. § 974.06/Writ of Coram Nobis Postconviction
Motion in the Brown County Circuit Court, Branch VIII,
Case No. 1998CT1403,
The Honorable Beau G. Liegeois, Presiding

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TABLE OF CONTENTS

	Page
ISSUES PRESENTED	1
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	1
STATEMENT OF THE CASE AND FACTS	2
STANDARD OF REVIEW.....	5
ARGUMENT	5
CONCLUSION.....	8
CERTIFICATION AS TO FORM/LENGTH	9
CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)	9

TABLE OF AUTHORITIES

Cases

<i>State v. Escalona-Naranjo</i> , 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).....	1, 6, 8
<i>State ex rel. Washington v. State</i> , 2012 WI App 74, ¶ 27, 343 Wis. 2d 434, 819 N.W.2d 305.....	5, 6
<i>State v. Casteel</i> , 2001 WI App. 188, ¶ 25, 247 Wis. 2d 451, 634 N.W.2d 338	4, 7
<i>State v. Jackson</i> , 229 Wis 328, 337, 600 N.W.2d 39 (Ct. App. 1999)	1, 7
<i>State v. Pettit</i> , 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992).....	1, 7
<i>State v. Romero-Georgana</i> , 2014 WI 83, ¶ 35, 360 Wis. 2d 522, 849 N.W.2d 668.....	6
<i>State v. Witkowski</i> , 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).....	1, 6, 8
<i>Univest Corp. v. General Split Corp.</i> , 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989)	6

Statutes

Wis. Stat. (Rule) 809.23	4
Wis. Stat. § 974.06(4).....	6

ISSUES PRESENTED

Are Robert E. Hammersley's claims procedurally barred because all of them are either: (1) previously litigated and thus barred by *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991); (2) could have been raised in Hammersley's previous appeals and thus barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994); or (3) are based on arguments that are unintelligible and thus inadequately briefed for the State to formulate a response or for the Court of Appeals to independently review them and thus barred by *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992); *State v. Jackson*, 229 Wis 328, 337, 600 N.W.2d 39 (Ct. App. 1999)?

Hammersley previously litigated whether his petition for a John Doe investigation was properly denied and whether his motion to reconsider that denial was properly denied. This Court held that they were. He further did not allege sufficient facts in his motion to establish that he was entitled to coram nobis relief.

This Court should affirm the circuit court's decision denying Hammersley's motion without a hearing.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case involves only the application of well-settled law on the postconviction pleading standards to the facts, which the briefs should adequately address.

STATEMENT OF THE CASE AND FACTS

According to the police report of Officer Rodney Reetz of the Green Bay Police Department, on September 19, 1998 around 3:24am, Officer Reetz was dispatched to the Speed Way Gas Station off of US Highway 41 Northbound. (R. 4:2.) Upon arrival, he spoke with a citizen named Francisco Hernandez who indicated he was involved in a vehicle collision with Hammersley in the area of Main St. and Clay St. in the City of Green Bay, Brown County, Wisconsin. (R. 4:2.) Hernandez stated that after the collision Hammersley continued to drive. (R. 4:2.) Hernandez and his front seat passenger were able to get Hammersley to stop, but after indicating he needed to wait for police to arrive, Hammersley again drove off. (R. 4:2.) Hernandez followed Hammersley to the Speed Way Gas Station where they entered, and Hernandez held Hammersley until police arrived. (R. 4:2.)

Officer Reetz made contact with Hammersley, and he provided multiple versions of what occurred. (R. 4:2.) He first said he was on his way to the California Strip Club and must have missed his turn. (R. 4:2.) He stated he did not know how the accident happened, but admitted he drove off and the other driver followed him and made him stop. (R. 4:2.) He also admitted that he was drunk and did not want to get arrested. (R. 4:2.) He then changed his story to indicate that he was scared and didn't know why he was being chased. (R. 4:2.) He also alleged that the other driver threw a tire iron into his car as they were driving. (R. 4:2.) He later stated again he was scared of being arrested. (R. 4:2.)

Officer Reetz conducted an OWI investigation that included standardized field sobriety tests. (R. 4:2-3.) As a result of Hammersley's performance on the tests, he was

arrested for Operating While Intoxicated and brought to St. Vincent's hospital for a blood draw. (R. 4:3.) The results of that blood draw indicated that Hammersley's BAC was .17% by alcohol weight. (R. 4:3.)

The State charged Hammersley with Count 1: Hit and Run - Attended Vehicle, Count 2: Operating While Intoxicated - 3rd Offense, and Count 3: Operating with a Prohibited Alcohol Concentration - 3rd Offense. (R. 4:1.) On January 12, 1999, Hammersley entered no contest pleas to Count 1 and Count 3 and was found guilty of both charges. (R. 45:1.)

On April 21, 2020, Hammersley filed a "Petition for Reconsideration of 2013 Decision and/or new Tendering of Request for John Doe Hearing Pursuant to Wisconsin Statute 968.26 and/or Federal Investigations with Added Request for 13 Judicial Notices." (R. 54:1.) On July 24, 2020 the Honorable Judge Liegeois entered an order denying the petition because the issue was already "conclusively decided by a Brown County Circuit Court Judge, who denied Mr. Hammersley's previous petition." (R. 3:1-2.)

On August 12, 2020, Hammersley filed a Petition for Reconsideration of the July 2020 order. (R. 7.) Judge Liegeois again denied the petition. (R. 8.) Hammersley proceeded to file a three-part Petition for John Doe (R. 9-11.) as well as a "Petition for Coram Nobis and Reassessment of 2020 John Doe Decisions File No. 13JD24 and/or Continued Request for a John Doe Hearing Pursuant to Wis. Stat. § 968.26 and/or Coupled with Requests Under 28 U.S.C. § 535 Federal Investigations with Re-Requested 13 Judicial Notices to Assist in Setting Aside the Wrongful Convictions in Case No. 98CT1403." (R. 12.). On December 9, 2020, the Honorable

Judge Hinkfuss issued an order denying the defendant's petitions. (R. 29.)

Through a series of subsequent filings, Hammersley continued to make the same or similar requests to the circuit courts. (R. 45:3.) At one point Judge Liegeois warned Hammersley that, "[his] repetitive filings are starting to lack proper decorum expected of court filings in the State of Wisconsin." (R. 39:1.)

Prior to and while these issues were being litigated in 98CT1403, Hammersley filed similar documents with the Court of Appeals. (*see* Appendix.) In 20AP837¹ and 20AP838 Hammersley appealed an order denying a motion for postconviction relief pursuant to Wis. Stat. § 974.06 or alternatively a writ of error coram nobis, and this Court summarily affirmed the lower court. (App. 101.) In 20AP1060-W and 20AP1061-W Hammersley filed a writ of prohibition seeking review of the circuit court's denial of his petition for writ of coram nobis and motions for judicial notice, which this Court denied. (App. 105.) In 21XX625 Hammersley filed a motion for "investigation and judicial notice[of a] campaign of harassment and/or ethics complaints' regarding past petitions Hammersley has filed with this court seeking writs of coram nobis and mandamus." (App. 107.) This motion was also denied. (App. 107.)

In 21AP1269-W Hammersley filed a petition for a supervisory writ of mandamus that appears to challenge the same decisions made by Judge Liegeois in 98CT1403 as being challenged in this appeal. (App. 108.) The Court denied the

¹ These are all unpublished orders that normally would not be citable pursuant to Wis. Stat. (Rule) 809.23, but the State is citing them for the appropriate and limited purpose of establishing the law of the case.

writ noting that Hammersley was “procedurally barred from filing successive petitions seeking the same relief,” and that he “failed to provide any grounds that would warrant the relief he seeks.” (App. 109.) Hammersley again appeals the decisions denying his April 21, 2020 and August 12, 2020 John Doe related motions and the circuit court’s failure to act on his December 2, 2020 petition for writ of coram nobis.

STANDARD OF REVIEW

This Court reviews *de novo* whether an appeal is procedurally barred. *State ex rel. Washington v. State*, 2012 WI App 74, ¶ 27, 343 Wis. 2d 434, 819 N.W.2d 305.

ARGUMENT

Hammersley’s claims are procedurally barred because he previously litigated whether his April 20, 2020 and August 12, 2020 motions were properly denied and whether he is entitled to coram nobis relief, his motion was insufficiently pled to overcome the procedural bar, and his arguments are unintelligible and thus inadequately briefed for the State to formulate a response or for the Court of Appeals to independently review them.

I. Hammersley previously litigated the issue as to whether his motions were properly denied and whether he is entitled to coram nobis relief.

To the extent Hammersley’s arguments can even be understood, this appeal appears to just be the latest in a series of Hammersley’s attempts to relitigate issues the Court of Appeals has already addressed and rejected *ad nauseum*, as

referenced in the Statement of Case and Facts section above. Hammersley's claims are therefore barred by *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). This Court has "repeatedly held that '[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.'" *Washington*, 343 Wis. 2d 434, ¶ 30 (alteration in original) (quoting *Witkowski*, 163 Wis. 2d 985, 990). All of these previous decisions by the Court of Appeals establish the law of the case and cannot be revisited simply because Hammersley reframes his argument. See *Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989).

II. Hammersley did not allege sufficient facts to overcome *Escalona-Naranjo*.

If this Court concludes that Hammersley's latest postconviction motion is not barred under *Witkowski*, it should hold that this motion is barred under the *Escalona-Naranjo* rule. Under that rule, if a defendant filed "a motion under [Wis. Stat.] § 974.02 or a direct appeal or a previous motion under § 974.06, the defendant is barred from making a claim that could have been raised previously unless he shows a sufficient reason for not making the claim earlier." *State v. Romero-Georgana*, 2014 WI 83, ¶ 35, 360 Wis. 2d 522, 849 N.W.2d 668 (citation omitted); see also Wis. Stat. § 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

To the extent Hammersley attempts to raise new arguments to attack his 1998 OWI conviction, he failed to explain why he could not have raised these arguments in any of his voluminous previous postconviction litigation.

III. Hammersley’s arguments are unintelligible and thus inadequately briefed to formulate a response or for the Court of Appeals to independently review them.

To the extent Hammersley is making arguments that are not disposed of by the previous two arguments, the Court should still dispose of them because they are extremely difficult to understand. Hammersley has not adequately briefed his issues, which makes it almost impossible for the State to respond, and the State assumes it would make it very difficult for the Court to review. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (1992) and *State v. Jackson*, 229 Wis 328, 337, 600 N.W.2d 39 (Ct. App. 1999) (“A party must do more than simply toss a bunch of concepts into the air with the hope that either the . . . court or the opposing party will arrange them into viable and fact-supported legal theories.”).

IV. The Court should impose *Casteel* sanctions on Hammersley.

In *Casteel*, this Court sanctioned the defendant for “abusing the appellate process by repetitively litigating the same matters.” *State v. Casteel*, 2001 WI App. 188, ¶ 25, 247 Wis. 2d 451, 634 N.W.2d 338. This Court therefore imposed the following restrictions on his further filings:

no further filings will be accepted from him unless he submits by affidavit all of the following:

1. A copy of the circuit court’s written decision and order he seeks to appeal,
2. A statement setting forth the specific grounds upon which this court can grant relief,
3. A statement showing how the issues sought to be raised differ from issues raised and previously adjudicated, and

4. A statement of why any new claims so raised are acceptable under *Escalona-Naranjo*, 185 Wis. 2d at 184–86 [517 N.W.2d 157].

Casteel, 247 Wis. 2d 451, ¶ 25 (alteration in original).

Hammersley has made several attempts at postconviction relief from his convictions in Brown County Circuit Court case number 98CT1403. Because Hammersley is repeatedly litigating claims that are barred by either *Witkowski* or *Escalona-Naranjo*, and are unintelligible, this Court should warn Hammersley that it may impose *Casteel* sanctions on him if he pursues another appeal seeking relief from his convictions in that case.

CONCLUSION

This Court should affirm the circuit court's orders denying Hammersley's John Doe petition in 98CT1403 and his motion for reconsideration. This Court should further find that Hammersley is not entitled to coram nobis relief and impose *Casteel* sanctions on him.

Dated this 22nd day of July, 2022.

Respectfully submitted,

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Plaintiff-Respondent

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b), (bm), and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 1,987 words.

**CERTIFICATE OF COMPLIANCE WITH WIS. STAT.
§ 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12). I further certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief filed as of this date.

Dated this 22nd day of July, 2022.

Electronically Signed By:
MERANDA HILLMANN
Assistant District Attorney