

our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm.

BACKGROUND

This court has previously summarized the relevant facts and procedural history of Sundermeyer's case. For purposes of this appeal, it suffices to state that in 2006, a jury found Sundermeyer guilty of armed robbery and burglary. The circuit court sentenced him to twenty-five years of initial confinement and ten years of extended supervision. After the circuit court denied Sundermeyer's motion for postconviction relief alleging the erroneous introduction of other-acts evidence, he appealed and we affirmed. *See State v. Sundermeyer*, No. 2008AP541-CR, unpublished slip op. (WI App Apr. 14, 2009). The Wisconsin Supreme Court denied Sundermeyer's petition for review.

On August 23, 2010, Sundermeyer filed a motion for postconviction relief under WIS. STAT. § 974.06. Sundermeyer alleged three errors and sought a new trial:

First, he complained that trial counsel was ineffective for failing to seek suppression of DNA evidence. Second, he alleged that trial counsel was ineffective for failing to seek suppression of a blue duffle bag because of a broken chain of custody. Third, he complained that trial counsel was ineffective for failing to utilize certain records that would impeach [the victim]'s testimony, essential because the matter ultimately came down to a credibility contest between her and Sundermeyer. Sundermeyer additionally alleged that postconviction counsel was ineffective for not raising these issues in the original postconviction proceedings.

See State v. Sundermeyer, No. 2012AP703, unpublished slip op. ¶4 (WI App Jan. 14, 2014).

The circuit court addressed Sundermeyer's claims and denied his request for a new trial. *Id.*, unpublished slip op. ¶¶5-8. Sundermeyer appealed the order, and this court considered and rejected each of Sundermeyer's claims. *Id.*, unpublished slip op. ¶1. The Wisconsin Supreme Court denied Sundermeyer's petition for review.

On July 8, 2014, Sundermeyer filed another postconviction motion under WIS. STAT. § 974.06. Sundermeyer made several allegations concerning the lead detectives and the prosecutor on his case. The allegations centered on events and interactions that took place between 1991 and 1994.

Specifically, Sundermeyer claimed he had an "on/off" romantic relationship with the stepdaughter of one of the detectives between 1991 and 1994. Sundermeyer further claimed that in 1994, he had been blamed by the stepdaughter for the theft of the detective's firearm.

Additionally, Sundermeyer claimed that he belonged to a gang with another of the detectives before that individual became a police officer. Between 1992 and 1993, Sundermeyer claimed to have had a romantic relationship with the detective's girlfriend. According to Sundermeyer, at a 1993 New Year's Eve party, the two got into a physical fight in which the parties pulled guns but no shots were fired. Sundermeyer further asserted that in 2013, this detective was charged with obstructing justice. Sundermeyer acknowledges that the charges were subsequently dismissed.

Lastly, as to the prosecutor who handled his case, Sundermeyer claimed the two "had a two-night romantic relationship" at some point in 1991 or 1992, which Sundermeyer eventually broke off.

In his motion, Sundermeyer asserted that this information entitles him to relief on four different grounds. According to Sundermeyer, the factual allegations concerning the detectives and prosecutor constitute newly discovered evidence; create a conflict of interest between Sundermeyer and the people who investigated and prosecuted his case; establish a claim of outrageous government conduct; and, when taken together, support his request for a new trial in the interest of justice.

The circuit court denied his motion after concluding that Sundermeyer's allegations did not rise to the level of newly discovered evidence. The circuit court determined that, if true, "[v]irtually all the allegations about the detectives and the prosecutor were *known* to the defendant far in advance of the trial and the prior postconviction proceedings." (Emphasis in original.) Additionally, the circuit court "perceive[d] no reason," let alone a sufficient reason, for why Sundermeyer could not have previously raised his claims. Accordingly, the circuit court ruled that Sundermeyer's motion was procedurally barred by *Escalona-Naranjo*. Sundermeyer appeals.

DISCUSSION

The postconviction procedures of WIS. STAT. § 974.06 allow a defendant to attack his conviction after the time for appeal has expired. *See Escalona-Naranjo*, 185 Wis. 2d at 176. There is, however, a limitation: an issue that could have been raised on direct appeal or by prior motion is barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the issue earlier. *See State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Allowing "[s]uccessive motions and appeals, which all could have been brought at

the same time” is prohibited by WIS. STAT. § 974.06 and *Escalona-Naranjo*, which teaches that “[w]e need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185.

Sundermeyer’s alleged prior personal and sexual relationships with the detectives’ stepdaughter and girlfriend and with the prosecutor occurred over ten years before the prosecution of Sundermeyer’s case. He does not explain why he failed to make these claims at trial, in his prior appeal, or in his prior WIS. STAT. § 974.06 motion. Consequently, we conclude Sundermeyer’s current claims are barred because he has not provided a sufficient reason for failing to raise them in his prior postconviction motion.²

Upon the foregoing reasons,

IT IS ORDERED that the circuit court’s order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

² Insofar as Sundermeyer believes the circuit court “conceded” some of the claims he raised had merit by not explicitly discussing them, he is incorrect. The circuit court concluded that Sundermeyer’s claims were procedurally barred. As such, no further discussion of the merits of those claims was necessary. However, to the extent that the circuit considered the merits of Sundermeyer’s newly discovered evidence claim, it correctly concluded that Sundermeyer had failed to make the requisite showings. *See State v. Love*, 2005 WI 116, ¶43, 284 Wis. 2d 111, 700 N.W.2d 62 (In order to secure a new trial based on newly discovered evidence, the defendant must show “that ‘(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.’”) (citations omitted). Sundermeyer’s allegations concerning the lead detectives and the prosecutor do not constitute newly discovered evidence.