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**DISTRICT III**

May 14, 2019

To:

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

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2017AP2179

State of Wisconsin v. Robert B. McBain (L. C. No. 2014CF94)

Before Stark, P.J., Hruz and Seidl, 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).**

Robert McBain, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2017-18)<sup>1</sup> postconviction motion for relief. 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.

McBain pleaded guilty to second-degree murder, as a party to a crime. According to a criminal complaint, text messages indicated McBain was hired to assist in committing a homicide. After his conviction, McBain's attorney filed a no-merit report, McBain filed a response, and his attorney filed a supplemental report. We affirmed the judgment of conviction. See *State v. McBain*, No. 2015AP1895-CRNM, unpublished op. and order (WI App Oct. 26, 2016). A year later, McBain file a "Petition for Redress" in the circuit court, alleging a Fourth Amendment violation. The circuit court denied the "petition." The court noted that McBain claimed his case should be dismissed because he was arrested without a warrant, but he provided no citation to legal authority that all arrests must be made with a warrant, and the court was not aware of any such legal authority. McBain now appeals.

Due process for a convicted defendant permits him or her a single appeal of that conviction and a single opportunity to raise claims of error. *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). WISCONSIN STAT. § 974.06(4) also prevents defendants from raising claims in a § 974.06 motion that were previously adjudicated or could have been raised in a prior postconviction motion. Where a defendant's claim for relief could have been, but was not, raised in a prior postconviction motion or on direct appeal, the claim is procedurally barred absent a sufficient reason for the defendant failing to raise it. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We have further held that *Escalona-Naranjo* applies in cases like this one, when a defendant's postconviction issues have been addressed by the no-merit procedure. See *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

McBain’s primary argument is that his arrest violated the Fourth Amendment. According to McBain, he was “arrested without a warrant ....” Further, McBain argues the “complaint was devoid of any arrest warrant, or affidavits or affidavit filed or attached to the criminal complaint to support charging Mr. McBain of any crime(s).” However, McBain’s Fourth Amendment claim, however, is procedurally barred because he could have, but did not, raise this issue in response to the no-merit report. We note in this regard that our decision accepting the no-merit report and affirming the conviction specifically determined the entry of McBain’s guilty plea was valid. We also stated that the right to raise nonjurisdictional defenses and defects, including claimed violations of constitutional rights, is forfeited by a valid guilty plea. *See State v. Kelly*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886. In addition, McBain fails to present a sufficient reason for failing to raise the issue previously. His Fourth Amendment claim is therefore barred by *Escalona-Naranjo*.

McBain also seems to suggest that we lack jurisdiction over the appeal because the record on appeal is missing “[t]he paper by which the action or proceeding was commenced.” McBain first clarifies in his reply brief what document is purportedly missing—an arrest warrant—and how he believes that deprives this court of jurisdiction. We generally do not consider arguments raised for the first time in a reply brief. *Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502 (Ct. App. 1995). Regardless, the record on appeal contains the criminal complaint; the transcript of the plea hearing, together with the plea questionnaire and waiver of rights form with attachments including the plea agreement; the judgment of conviction; and this court’s decision affirming the conviction, among other things. The circuit court correctly noted that McBain provides no citation to legal authority that all arrests must be

made with a warrant, and we are not aware of any such authority. McBain is not entitled to relief on this claim.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*