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DISTRICT I

September 23, 2025

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Darrell L. Rogers 537552
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You are hereby notified that the Court has entered the following opinion and order:

2024AP936 State of Wisconsin v. Darrell L. Rogers (L.C. # 2013CF5328)

Before Colón, P.J., Donald, and Geenen, 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).

Darrell L. Rogers, pro se, appeals an order that denied his motion for postconviction relief. Upon consideration of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[1] Rogers's claims are procedurally barred, and therefore we summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Following a bench trial in September 2014, the trial court found Rogers guilty of first-degree reckless homicide in connection with the death of his girlfriend's five-year-old son.[2] Rogers appealed his conviction pursuant to the no-merit procedures set forth in WIS. STAT. RULE 809.32, and ***Anders v. California***, 386 U.S. 738 (1967). His appellate counsel filed a no-merit report on Rogers's behalf, Rogers filed two responses, and his appellate counsel filed a supplemental no-merit report. *See* RULE 809.32(1). Following our review of the record, the no-merit reports, and Rogers's responses, we concluded that Rogers's appeal did not present any arguably meritorious issues, and we summarily affirmed the judgment of conviction. ***State v. Rogers*** (***Rogers I***), No. 2016AP2048-CRNM, unpublished op. and order (WI App May 19, 2020).

In April 2024, Rogers moved for postconviction relief pursuant to WIS. STAT. § 974.06. He alleged that the trial court erroneously exercised its discretion by failing to recuse itself; his trial counsel was ineffective for failing either to seek the trial court's recusal or to allege that the trial court was biased; and the trial court's staff perpetrated a fraud by altering his trial transcripts. The circuit court entered an order on May 1, 2024, denying the postconviction motion as procedurally barred.[3] Rogers appeals.

WISCONSIN STAT. § 974.06 permits a prisoner to pursue a collateral attack on a criminal conviction after the time for a direct appeal has passed. ***State v. Henley***, 2010 WI 97, ¶50, 328 Wis. 2d 544, 787 N.W.2d 350. There is, however, a limitation, because "[w]e need finality in

[2] The Honorable Stephanie Rothstein presided over the trial proceedings. We refer to her as the trial court.

[3] The Honorable Mark A. Sanders presided over the postconviction proceedings underlying this appeal. We refer to Judge Sanders as the circuit court.

our litigation." ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Accordingly, a convicted person who has previously pursued postconviction litigation may not raise claims in a subsequent postconviction motion under WIS. STAT. § 974.06, unless the person provides a "'sufficient reason'" for failing to raise or adequately address the claims in an earlier postconviction motion or appellate proceeding. ***Escalona-Naranjo***, 185 Wis. 2d at 181-82 (citing § 974.06(4)).

"A no-merit appeal clearly qualifies as a previous motion under [WIS. STAT.] § 974.06(4). Therefore, a defendant may not raise issues that could have been raised in the previous no-merit appeal, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously." ***State v. Allen***, 2010 WI 89, ¶41, 328 Wis. 2d 1, 786 N.W.2d 124. Before applying a procedural bar to postconviction motions filed after a no-merit appeal, however, we "must consider whether the no-merit procedures (1) were followed; and (2) warrant sufficient confidence to apply the procedural bar[.]" ***Id.***, ¶62.

We have conducted an assessment of the no-merit proceedings underlying ***Rogers I***, and we have determined that appellate counsel and this court properly followed the procedures required by ***Anders*** and WIS. STAT. RULE 809.32. As our opinion in ***Rogers I*** reflects, we independently examined the record and considered the submissions from Rogers and his appellate counsel. ***Id.***, No. 2016AP2048-CRNM, at 1-2. We agreed with appellate counsel's analysis of the issues, and we particularly noted appellate counsel's "detailed description" of a portion of the record underlying aspects of Rogers's responses to the no-merit report. ***Id.*** at 8. Ultimately, we concluded that the record confirmed appellate counsel's assessment that no arguably meritorious issues existed for appeal. ***Id.*** at 2, 10. The proceedings in ***Rogers I*** thus warrant confidence in the outcome of the appeal.

In light of the foregoing, Rogers may not pursue claims under WIS. STAT. § 974.06 unless he proffers a sufficient reason for serial litigation. ***Allen***, 328 Wis. 2d 1, ¶61. The proffer must be more than a conclusory assertion and must include allegations of "'sufficient material facts,'" that is, "'who, what, where, when, why, and how,'" demonstrating the sufficiency of his identified reason. ***State v. Romero-Georgana***, 2014 WI 83, ¶¶36-37, 360 Wis. 2d 522, 849 N.W.2d 668 (citations omitted). On appeal, we assess the sufficiency of Rogers's reason for additional postconviction litigation by examining the four corners of his postconviction motion, not his appellate briefs. *See* ***id.***, ¶64; *see also* ***State v. John Allen***, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

Our review of Rogers's WIS. STAT. § 974.06 motion reveals that Rogers failed to offer the circuit court any reason to permit serial litigation, much less a sufficient reason supported as required by allegations of material fact. Accordingly, the circuit court properly barred his claims. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-82.

In this court, Rogers asserts for the first time that he has a sufficient reason for serial litigation, specifically, "postconviction counsel's failure to make a 'conscientious examination' of the case and the court of appeals' failure to make a 'full examination' of all the proceedings." (Some spelling and punctuation altered.) These allegations come too late. A convicted person must allege a sufficient reason for a second or subsequent postconviction motion within the motion itself, not delay the allegation until the matter reaches this court. ***John Allen***, 274 Wis. 2d 568, ¶27. We do not consider claims made for the first time on appeal. ***State v. Pharm***, 2000 WI App 167, ¶9, 238 Wis. 2d 97, 617 N.W.2d 163.

Moreover, were we to consider Rogers's proposed reasons for serial litigation, we would reject them. They are defeated by our decision in ***Rogers I*** and by numerous well-settled legal principles.

Rogers alleges that this court did not fully examine the proceedings, but we explicitly stated in ***Rogers I*** that we had conducted the examination that ***Anders*** requires. Courts "are entitled to rely on the court of appeals when it asserts that it has conducted the independent review 'mandated by ***Anders***' …. [A]ny other rule would effectively eliminate the ***Escalona-Naranjo*** bar after a no-merit appeal[.]" ***Allen***, 328 Wis. 2d 1, ¶82. As to Rogers's allegation about the poor quality of his appellate counsel's scrutiny of the proceedings, our decision in ***Rogers I*** included an explicit recognition of appellate counsel's detailed record review. ***Id.***, No. 2016AP2048-CRNM, at 8. Further, our independent evaluation of the record led us to conclude that "there is no issue of arguable merit that could be pursued on appeal." ***Id.*** at 2. Because we concluded that any further challenge to Rogers's conviction would be meritless, Rogers's appellate counsel necessarily did not err by failing to raise any such meritless issues. *See* ***State v. Sanders***, 2018 WI 51, ¶55, 381 Wis. 2d 522, 912 N.W.2d 16.

Additionally, our decision in ***Rogers I*** addressed Rogers's contentions that the circuit court was biased and that his trial counsel was ineffective for failing to pursue that issue. ***Id.***, No. 2016AP2048-CRNM, at 4-7. Rogers cannot raise these claims again, no matter how artfully he may rephrase them. ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). And finally, Rogers's claim that a court official tampered with the transcripts is nothing more than his self-serving opinion that his recollection of the trial testimony is more accurate than the court reporter's transcription. Conclusory assertions of this type are insufficient to sustain a collateral attack on a criminal conviction. ***John Allen***, 274 Wis. 2d 568, ¶¶9, 21.

For all the foregoing reasons,

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

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

Samuel A. Christensen
Clerk of Court of Appeals