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DISTRICT IV

October 23, 2025

To:

Hon. Ellen K. Berz
Circuit Court Judge
Electronic Notice

Michael C. Sanders
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Kendrick D. Sellers 603304
New Lisbon Correctional Institution
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New Lisbon, WI 53950-2000

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

2024AP517	State of Wisconsin v. v. Kendrick D. Sellers (L.C. # 2017CF2320)
2024AP518	State of Wisconsin v. v. Kendrick D. Sellers (L.C. # 2018CF1321)

Before Graham, P.J., Kloppenburg, and Nashold, 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).

Kendrick Sellers, pro se, appeals a circuit court order that denied his motion for postconviction relief under WIS. STAT. § 974.06 (2023-24).¹ Based on our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

In February 2019, Sellers pled to and was convicted of two counts of second-degree sexual assault by use of force. In June 2019, Sellers was sentenced to twenty-eight years of imprisonment.

Sellers was appointed postconviction counsel, who filed a postconviction motion on Sellers' behalf that sought plea withdrawal, resentencing, and additional sentence credit. The circuit court denied the claims for plea withdrawal or resentencing, but granted additional sentence credit. Sellers, by counsel, appealed his convictions and the orders denying postconviction relief, and we affirmed. *State v. Sellers*, Nos. 2021AP1206-CR and 2021AP1207-CR, unpublished slip op. and order (WI App July 8, 2022).

In October 2023, Sellers filed the pro se WIS. STAT. § 974.06 postconviction motion that is the subject of this appeal. In the current motion, Sellers argues that he was denied his rights to judicial substitution, an unbiased judge, and the effective assistance of counsel, as well as his right to compel witnesses to testify on his behalf. He also argues that his pleas were involuntary because he did not understand the proceedings and because he was under duress from threats by federal agents. He asserts that his claims are based on newly discovered evidence and that he is entitled to an evidentiary hearing. The circuit court denied the motion without a hearing. Sellers appeals.

WISCONSIN STAT. § 974.06 allows a defendant to raise constitutional claims after the time for a direct appeal has passed. See *State v. Henley*, 2010 WI 97, ¶¶52-53, 328 Wis. 2d 544, 787 N.W.2d 350. However, a defendant may not bring postconviction claims under § 974.06 if the defendant could have raised the claims in a previous postconviction motion or appeal, unless the defendant states a “sufficient reason” for failing to raise the issues earlier. See § 974.06(4); *State*

v. Escalona-Naranjo, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). The defendant must allege, within the four corners of the § 974.06 motion, a sufficient reason for failing to raise or adequately develop the claims in earlier proceedings. *State v. Allen*, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433. Whether the petition shows a sufficient reason is a question of law that we review de novo. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Here, Sellers’ WIS. STAT. § 974.06 motion does not assert any reason—much less a sufficient reason—that he did not raise his current claims in his prior postconviction motion or appeal. Accordingly, the State asked the circuit court to deny the motion as procedurally barred. In response, Sellers argued that the procedural bar does not apply because “he did attempt to raise” his current claims in his direct appeal “when his attorney wouldn’t.” It appears that Sellers may intend that assertion as a claim that his postconviction counsel was ineffective, and that counsel’s ineffective assistance is a sufficient reason for not previously raising his current claims. *See id.*, ¶36 (ineffective assistance of postconviction counsel may constitute a sufficient reason for not raising a claim in an earlier proceeding). However, any intended claim of ineffective assistance of postconviction counsel is insufficient because Sellers makes no attempt to weigh the strength of his current issues against the issues his postconviction counsel pursued. *See id.*, ¶46 (claim of ineffective assistance of postconviction counsel for failure to raise specific issues requires a comparison between the merits of the claims counsel did pursue and the claims in the § 974.06 motion).

On appeal, Sellers argues that “he unequivocally requested” that his postconviction counsel raise his current issues, but that his counsel failed to do so. He asserts that these issues are “clearly stronger” than the issues his postconviction counsel pursued. However, again,

Sellers makes no attempt to compare his current issues to the issues raised by his postconviction counsel. Moreover, as explained, we review the four corners of the postconviction motion to determine whether Sellers has shown a sufficient reason. We do not consider assertions made in a brief on appeal that were not made in the postconviction motion. *See id.*, ¶64.

Sellers also argues that he “informed the Court that he in fact had raised his issues on direct appeal, consequently he can’t be barred under *Escalona-Naranjo* for failing to raise them.” However, to the extent that Sellers means to suggest that his current arguments were already raised in prior proceedings, the result is that those arguments may not be raised in the current WIS. STAT. § 974.06 motion. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

Finally, to the extent that Sellers argues that the circuit court erred by adopting the State’s analysis in denying Sellers’ postconviction motion, we note that we independently review the sufficiency of the postconviction motion, without deference to the circuit court. *See Romero-Georgana*, 360 Wis. 2d 522, ¶30. On our independent review of Sellers’ postconviction motion, we conclude that Sellers did not show a sufficient reason for failing to raise his current claims previously. Accordingly, the circuit court properly denied Sellers’ motion without a hearing.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to 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