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DISTRICT II

January 14, 2026

To:

Hon. Faye M. Flancher
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

John D. Flynn
Electronic Notice

M.L. Powell #215268
Fox Lake Correctional Institution
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You are hereby notified that the Court has entered the following opinion and order:

2024AP858

State of Wisconsin v. M.L. Powell (L.C. #2015CF1917)

Before Neubauer, P.J., Grogan, and Lazar, 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).

M.L. Powell appeals from a circuit court order denying his WIS. STAT. § 974.06 (2023-24)¹ postconviction motion on the grounds that Powell failed to allege ineffective assistance of trial counsel in his first postconviction motion. 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. For the forthcoming reasons, we affirm.

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

The State charged Powell with multiple counts relating to two robberies that occurred in December 2015 outside of Rudy's Bar in Racine. The charges included one count of attempted armed robbery with use of force, three counts of armed robbery with use of force, five counts of felony bail jumping, and one count of possession with intent to deliver narcotics. The first incident was reported by Daniella,² who said that she and two others left Rudy's Bar and got into their car when an unknown black male entered their car and threatened them with a gun if they did not follow his instructions. The male had them drive to another location where he demanded items from the three victims. Two of the victims gave him their purses, and the male subsequently fled the scene. Afterwards, in a photo lineup, Susan, another of the victims, identified Powell as the perpetrator.

The second robbery was reported by Vanessa, who said that she was walking toward Rudy's Bar when an unknown black male grabbed her purse from behind. He struck Vanessa in the face multiple times with a handgun. He knocked her down and dragged her several feet across the parking lot until he took her purse. Vanessa, in subsequent photo lineup, identified Powell as the perpetrator.

Police executed a search warrant on Powell's residence while he was home. During the search, police discovered pieces of clothing that matched the suspect's as shown on surveillance video. They also found two prescription pill bottles, which Vanessa stated were the prescriptions she had recently filled.

² Pursuant to the policy underlying WIS. STAT. RULE 809.86, we use pseudonyms for each victim.

Powell proceeded to trial, where the jury found him guilty on all ten counts. The circuit court sentenced Powell to 66 years of initial confinement and 50 years of extended supervision. Powell, through counsel, sought postconviction relief arguing that the court erroneously denied his request to represent himself at trial. We affirmed the circuit court's order denying that motion.

Powell filed, pro se, a subsequent postconviction motion under WIS. STAT. § 974.06. He asserted that trial counsel was ineffective on four grounds: (1) by failing to play the bar's surveillance video and failing to cross-examine a police officer on his observations from that video; (2) by not filing a motion in limine to exclude cell phone evidence regarding the second robbery based upon alleged chain of custody issues; (3) by failing to suppress both the out-of-court identification and the in-court identification made by Susan due to alleged problems with the identification procedure; and (4) by failing to file a motion to sever the two robberies due to alleged misidentification. Powell argues that these errors made by trial counsel undermined confidence in the outcome of his trial.

As to the ineffective-assistance-of-postconviction-counsel claim, Powell argued that the above-mentioned issues "were clearly stronger than the [s]elf-representation issue" and "these claims were apparent from the record ..., they had more evidentiary support[, and] were 'deadbang winners' [warranting] reversal of his conviction [and the grant of] a new trial." He alleged that he told postconviction counsel to include two issues: the clothing in the surveillance video did not match the clothing recovered, and the cell phone recovered from the house did not belong to Vanessa. The circuit court denied the motion without a hearing stating that "[n]o reason exists for the failure to allege ineffective assistance of trial counsel in [Powell's] first post-conviction motion." Powell appeals from the court's order summarily denying his motion.

“Whether a defendant’s postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested [involves] a mixed standard of review.” *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. Whether a postconviction motion alleges sufficient material facts that, if true, would entitle the defendant to relief is a question of law that we review de novo. *Id.* If the motion alleges sufficient material facts, the circuit court must hold an evidentiary hearing. *Id.* If the motion does not raise these facts, or only presents conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the court has discretion to grant or deny a hearing. *Id.* “We review a court’s discretionary decisions under the deferential erroneous exercise of discretion standard.” *Id.*

In a Wis. STAT. § 974.06 motion, a defendant must raise all grounds for relief in his original, supplemental, or amended motion. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). “[I]f the defendant’s grounds for relief have been finally adjudicated, waived[,] or not raised in a prior postconviction motion, they may not become the basis for a sec. 974.06 motion.” *Escalona-Naranjo*, 185 Wis. 2d at 181. An exception exists if a defendant is able to provide “a sufficient reason to raise a constitutional issue in a sec. 974.06 motion that could have been raised on direct appeal or in a [WIS. STAT. §] 974.02 motion.” *Escalona-Naranjo*, 185 Wis. 2d at 185. If a defendant’s claim for relief could have been raised in a prior postconviction motion or on direct appeal but was not, and the defendant has provided no sufficient reason for failing to raise it before, then the appeal is untimely and procedurally barred. *Id.* at 186; see *State v. Casteel*, 2001 WI App 188, ¶¶17-18, 247 Wis. 2d 451, 634 N.W.2d 338. An ineffective-assistance-of-postconviction-counsel claim may be a sufficient reason for failing to raise an available claim earlier. *Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. A defendant alleging ineffective assistance

of counsel, however, has the burden of proving both that counsel's performance was deficient and that counsel's deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, (1984). To prove deficient performance, a defendant must show that their counsel's representation fell below an objective standard of reasonableness. *Id.* at 688. There is a strong presumption that counsel's performance is reasonable and a defendant must overcome this presumption. *Id.* at 689. To prove prejudice, a defendant must show that there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 694. A defendant must also prove that the claims brought in their current § 974.06 motion are "clearly stronger" than the claims in their earlier postconviction motion. *Romero-Georgana*, 360 Wis. 2d 522, ¶¶45, 46.

We conclude that Powell has failed to develop any argument that the claims in his WIS. STAT. § 974.06 motion on appeal are "clearly stronger" than the self-representation claim raised by his postconviction counsel in his earlier motion. Powell provides no analysis and merely asserts that the claims are "clearly stronger." He makes no comparison between his earlier self-representation claim and his current claims to demonstrate how his current claims are "clearly stronger." In addition, his motion does not adequately address the elements of an ineffective-assistance-of-counsel claim to establish his allegation. Instead, Powell makes conclusory statements that the new issues "were clearly stronger than the [s]elf-representation issue" and "these claims were apparent from the record ..., they had more evidentiary support[, and] were 'deadbang winners[.]'" Because Powell failed to prove that these current claims are "clearly stronger" than the self-representation claim, he has failed to provide a "sufficient reason" to overcome the procedural bar. Accordingly, the circuit court did not err in summarily denying his WIS. STAT. § 974.06 motion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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