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DISTRICT I

January 21, 2026

To:

Hon. Jonathan D. Richards
Circuit Court Judge
Electronic Notice

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

John W. Kellis
Electronic Notice

Annice Kelly
Electronic Notice

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

2024AP2016 State of Wisconsin v. Cesar D. DeLeon (L.C. # 2001CF4420)

Before White, C.J., Colón, P.J., and Geenen, J.

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).

The State appeals from an order of the circuit court granting Cesar D. DeLeon's postconviction motion to withdraw his guilty pleas. 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 (2023-24).[1] For the reasons set forth below, we reverse.

In August 2001, DeLeon and Genix Hernandez robbed several homes and businesses in the Milwaukee area. The State filed 21 criminal charges against DeLeon as a result of this crime spree, and DeLeon faced roughly 819 years of imprisonment. DeLeon resolved the charges with

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

guilty pleas to three counts of armed robbery, two counts of substantial battery, and one count each of false imprisonment, armed burglary, and misdemeanor battery. In exchange for DeLeon's guilty pleas, the State dismissed the remaining criminal charges and recommended a substantial prison sentence to be served concurrently with any sentence imposed later in another criminal case pending in Racine County for kidnapping charges. Recognizing that the Racine County Circuit Court could still order its sentence consecutive to any other sentence, the circuit court nevertheless adopted the recommendation to structure its sentences as concurrent to any sentences later imposed by the Racine County Circuit Court.[2] The Racine County Circuit Court, however, subsequently structured its sentences on DeLeon's kidnapping charges as consecutive to DeLeon's sentences imposed in this case.

Following his conviction, DeLeon filed several pro se postconviction motions. Underlying this appeal, DeLeon filed a pro se motion in December 2023 titled "Notice and Motion to Vacate Conviction and Sentence Pursuant to Section 806.07, Stats." DeLeon alleged that his trial counsel was ineffective for misadvising him and failing to alert DeLeon to the fact that his plea agreement was "facially invalid" due to the fact that the circuit court had no authority to run his sentences concurrent to a sentence yet to be imposed by the Racine County Circuit Court. DeLeon further alleged that his judgment of conviction was void because "the court in Milwaukee was well outside of its jurisdiction when it imposed its sentence rendering the sentence void." DeLeon requested that his sentence be vacated and that he be resentenced.

The circuit court held an evidentiary hearing at which DeLeon's trial counsel and DeLeon testified. The circuit court subsequently issued a written decision granting DeLeon's motion. In its decision, the circuit court rejected the State's argument that DeLeon's motion was

[2] The Honorable Richard J. Sankovitz accepted DeLeon's pleas, imposed sentence, and entered the judgment of conviction.

procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The circuit court further rejected DeLeon's arguments of ineffective assistance of counsel and that DeLeon received a void sentence. Instead, the circuit court found that DeLeon's plea was not knowingly and voluntarily entered because it was "based on inaccurate legal information from sentencing," namely the belief that the circuit court's sentence in this case could bind the Racine County Circuit Court to run DeLeon's sentences concurrently. Therefore, the circuit court found that DeLeon was entitled to plea withdrawal. The State now appeals.

On appeal, the State renews its argument that the procedural bar imposed by ***Escalona-Naranjo*** applies and argues that the circuit court erroneously rejected the procedural bar. We agree with the State, and we conclude that DeLeon's most recent postconviction motion is procedurally barred because he did not raise his current claims in an earlier postconviction motion and failed to provide a sufficient reason for not doing so.

"Once a defendant's direct appeal rights are exhausted or the time for filing an appeal has expired, the defendant may collaterally attack his conviction via a motion under WIS. STAT. § 974.06." ***State v. Evans***, 2004 WI 84, ¶32, 273 Wis. 2d 192, 682 N.W.2d 784, *abrogated on other grounds by* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900. However, absent a showing of a sufficient reason, claims that a defendant could have raised earlier but did not are barred. ***Escalona-Naranjo***, 185 Wis. 2d at 185-86. Whether DeLeon's current claims are barred "presents a question of law which we review de novo." ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

The record reflects that DeLeon filed several pro se postconviction motions over the last 20 years since his conviction in this case: (1) in April 2008, DeLeon filed a motion seeking to amend his judgment of conviction to reflect a "common law name for spiritual and cultural significance"; (2) in June 2010, DeLeon filed a motion to vacate the DNA surcharge for his convictions; (3) in May 2011, DeLeon filed a motion to bar the Department of Corrections from

garnishing his monetary gifts to cover unpaid restitution; and (4) in June 2012, he filed a motion to amend his judgment of conviction to limit the garnishment of his prison wages to cover unpaid restitution. The parties do not dispute that the procedural bar imposed by ***Escalona-Naranjo*** was not triggered by any of these motions.

Rather on appeal, the parties dispute the import of another postconviction motion DeLeon filed in January 2015 titled "Motion for Production of Transcripts." In this motion, DeLeon cited to WIS. STAT. § 973.08(3)[3] and sought the production of "transcripts, discovery, arrest warrant & information, and any other relevant papers pertaining in the above captioned case." While we acknowledge that DeLeon's motion was narrowly titled as seeking only the production of transcripts, the body of his request sought more. In addition to transcripts, DeLeon also sought "discovery, arrest warrant & information" and, significantly, "any other relevant papers" pertaining to his case.

DeLeon argues that this motion was nothing more than a request for transcripts and pretrial discovery and, comparing his motion to the one addressed by our supreme court in ***State v. Starks***, 2013 WI 69, 349 Wis. 2d 274, 833 N.W.2d 146, *abrogated on other grounds by* ***State ex rel. Warren v. Meisner***, 2020 WI 55, 392 Wis. 2d 1, 944 N.W.2d 588, DeLeon further argues that his motion was a non-substantial request that does not trigger the application of the procedural bar put in place by ***Escalona-Naranjo***. However, taking DeLeon's motion as a whole, we are unpersuaded by DeLeon's argument that his motion is analogous to the motion to vacate a DNA surcharge addressed by our supreme court in ***Starks***, 349 Wis. 2d 274, ¶¶6, 46-47.

Instead, we agree with the State that we must construe DeLeon's January 2015 postconviction motion as one for more than just transcripts and pretrial discovery. In the text of

[3] WISCONSIN STAT. § 973.08(3) states: "The transcript of all other testimony and proceedings upon order of a court shall be delivered to a prisoner within 120 days of his or her request."

his motion, DeLeon sought more than transcripts. DeLeon also sought "discovery, arrest warrant & information" and, importantly, "any other relevant papers" pertaining to his case. Moreover, DeLeon did not limit his request to pretrial discovery or materials previously provided to his attorney prior to trial. He requested anything relevant to his case. Therefore, we do not construe his request as the narrow, non-substantial request DeLeon suggests, and we construe his request more appropriately as one that triggers the application of the procedural bar imposed by ***Escalona-Naranjo***. *See* ***State v. Kletzien***, 2011 WI App 22, ¶11, 331 Wis. 2d 640, 794 N.W.2d 920.

"The purpose of WIS. STAT. § 974.06(4) is to require criminal defendants to consolidate all their postconviction claims into *one* motion or appeal." ***Kletzien***, 331 Wis. 2d 640, ¶12. "Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation." ***Escalona-Naranjo***, 185 Wis. 2d at 185. Consequently, DeLeon must establish that he had a sufficient reason for failing to raise his current claims earlier, and on this front, we conclude that DeLeon has failed to establish a sufficient reason to overcome the procedural bar imposed by ***Escalona-Naranjo***.

At the evidentiary hearing before the circuit court, DeLeon stated that he simply "didn't know the law" and only recently learned from an unidentified person that his judgment was "voidable." Ignorance of the law is not a sufficient reason for waiting over 20 years to bring a claim that DeLeon could have brought earlier. *See* ***State v. Allen***, 2010 WI 89, ¶¶43-44, 328 Wis. 2d 1, 786 N.W.2d 124; ***State v. Collova***, 79 Wis. 2d 473, 488, 255 N.W.2d 581 (1977). In fact, as the State highlights, DeLeon's testimony at the evidentiary hearing suggests that he was aware of the factual basis for his current claims back in 2002 and could have easily included his

current claims in his earlier motion.[4] Having failed to provide a sufficient reason for failing to raise his current claims earlier, we conclude that DeLeon's current claims are procedurally barred by ***Escalona-Naranjo***, and the circuit court erred when it failed to apply this procedural bar.

In sum, we conclude that DeLeon's current postconviction motion is procedurally barred, and we reverse the circuit court's order granting DeLeon's request for plea withdrawal.

Therefore, for all the foregoing reasons,

IT IS ORDERED that the order reversed. *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

[4] Additionally, we note that DeLeon, represented by counsel, challenged his sentence imposed by the Racine County Circuit Court in ***State v. DeLeon***, No. 03-2651-CR, unpublished slip op. (WI App Oct. 13, 2004). DeLeon took issue with the consecutive nature of his sentence, and he argued that the Racine County Circuit Court erroneously exercised its discretion at sentencing by, among other things, "failing to provide an adequate explanation for making the sentences consecutive to the Milwaukee [C]ounty sentences." ***Id.***, ¶2. We concluded that the Racine County Circuit Court did not erroneously exercise its discretion in imposing a consecutive sentence and further noted that, by the time DeLeon was sentenced in the Racine County case, "the [circuit] court was aware of pending charges for escape and battery, crimes which were committed by DeLeon after the Milwaukee [C]ounty sentences were imposed." ***Id.***, ¶¶18-19.