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DISTRICT II

April 8, 2026

To:

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Circuit Court Judge
Electronic Notice

Timothy L. Baldwin
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Lisa E.F. Kumfer
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You are hereby notified that the Court has entered the following opinion and order:

2023AP395

State of Wisconsin v. Joshua L. Vinson, Sr. (L.C. #2017CF790)

Before Neubauer, P.J., Gundrum, 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).

Joshua L. Vinson, Sr. appeals, pro se, from an order of the circuit court denying his motion for postconviction relief. He argues defense counsel was ineffective in failing to timely file Vinson's notice of appeal and in failing "to challenge the filing of an Amended Information without ... a preliminary hearing[.]" 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 We affirm.

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

In 2017, the State charged Vinson with stalking, as a repeater, possession of cocaine, second or subsequent offense, and possession of drug paraphernalia, as a repeater. The circuit court conducted a preliminary hearing at which the arresting officer testified. The court found the officer's testimony "established a feasible account of [Vinson's] commission of a felony" and bound him over for trial. The State later filed an amended information, dropping the cocaine charge and adding a charge for possession of a narcotic drug, after testing at the State Crime Lab indicated the substance discovered in Vinson's possession was heroin, not cocaine.

Vinson reached a plea agreement with the State and submitted a plea questionnaire indicating he was pleading guilty to possession of a narcotic drug.² At the plea hearing that same day, the circuit court explained to Vinson that the stalking charge would be dismissed and that the paraphernalia charge would be dismissed and read in. Vinson indicated he understood and raised no objections. The court also informed Vinson that testing had revealed the substance found in his possession was heroin rather than cocaine, and that provided part of the factual basis supporting Vinson's plea. Vinson indicated he understood this as well. Vinson then entered a no-contest plea to the possession of a narcotic drug charge.

The circuit court sentenced Vinson to three years of probation, imposing and staying a sentence of two years of initial confinement and two years of extended supervision. Vinson did not appeal. In December of 2019, Vinson's probation was revoked.

² Vinson indicated on his plea questionnaire that he was pleading guilty, though, during the plea colloquy, he verbally entered a plea of no contest.

In August of 2020, Vinson filed a WIS. STAT. § 974.06 motion for postconviction relief, asserting the circuit court was without “[j]urisdiction to impose [Vinson’s] sentence” for several reasons. Among these was Vinson’s contention that he was “not given notice” that the cocaine possession charge was being amended to possession of a narcotic drug. The court denied the motion. Vinson appealed, and this court ultimately dismissed the appeal as untimely. *State v. Vinson, Sr.*, No. 2021AP1415, unpublished op. and order at 2 (WI App June 8, 2022).

Vinson then filed a “Writ of Error,” asserting that, *inter alia*, the circuit court lacked jurisdiction because Vinson was denied his right to a preliminary hearing and “notice” when “no evidence was introduced at the preliminary hearing which would support” the specific charge of possession of a narcotic drug. The court issued a written decision, concluding Vinson “was not deprived of his right to a preliminary hearing[,]” because the court found probable cause that he committed a felony, and “[a]ny felony would do for purposes of a bindover.” Vinson appeals, asserting novel arguments not raised in his original postconviction motion nor his subsequent “writ of error,” that his trial counsel was ineffective for failing to “challenge the Amended Information or file ... [a] timely Notice of Appeal[,]” directly challenging Vinson’s conviction.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). A defendant is barred from raising a claim in a WIS. STAT. § 974.06 motion if that claim was, or could have been, raised in a prior postconviction motion, unless the defendant demonstrates a “sufficient reason” for failing to do so. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Whether a claim is procedurally barred by *Escalona* is a question this court reviews de novo. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

We conclude that Vinson’s most recent arguments are not only procedurally barred by *Escalona*, they are forfeited due to his failure to raise them in the circuit court. “It is the often-repeated rule in this State that issues not raised or considered in the [circuit] court will not be considered for the first time on appeal.” *State v. Bodoh*, 226 Wis. 2d 718, 737, 595 N.W.2d 330 (1999) (citation omitted). In his “writ of error,” Vinson claimed: (1) the court lacked jurisdiction because the narcotic drug charge was not included in the original complaint, and evidence supporting that charge was not introduced at the preliminary hearing; (2) that this purported deficiency denied him his due process and equal protection rights; (3) that the court deprived him of due process when it denied his prior postconviction motion; and (4) that Vinson’s prosecution was a bad-faith abuse of prosecutorial discretion. The ineffective assistance claims he now argues on appeal are wholly separate claims that Vinson failed to preserve at the circuit court level.³

While this court generally has discretion to address forfeited issues,⁴ we have long held that “[c]laims of ineffective trial counsel or whether grounds exist to withdraw a guilty plea cannot be reviewed on appeal absent a postconviction motion in the [circuit] court.” *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (1996). We therefore deem Vinson’s claims forfeited.

Further, even if Vinson had not forfeited the arguments he now presents on appeal, they would be procedurally barred by *Escalona*. Vinson did not offer any reason, let alone a

³ Additionally, Vinson requests that we vacate his sentence, despite conceding that it was properly imposed. We will not consider “[a]rguments unsupported by references to legal authority.” *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

⁴ *State v. Kaczmariski*, 2009 WI App 117, ¶9, 320 Wis. 2d 811, 772 N.W.2d 702.

sufficient reason, that he could not have raised these issues in his original postconviction motion. To the extent Vinson intended to avoid the procedural bar on successive postconviction litigation by styling his second postconviction motion as a “writ of error,” his attempt fails. “[T]he nature of the motion and order denying it must be determined from its substance, and not from the label the defendant chose to apply.” *Buckley v. Park Bldg. Corp.*, 27 Wis. 2d 425, 431, 134 N.W.2d 666 (1965). The constitutional and jurisdictional challenges Vinson asserted in his “writ” must be raised via a postconviction motion under WIS. STAT. § 974.06. We therefore construe it as such and conclude that application of *Escalona* bars the claims asserted therein.

IT IS ORDERED that the order of the circuit court 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