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**DISTRICT II**

April 29, 2026

To:

Hon. Sandy A. Williams  
Circuit Court Judge  
Electronic Notice

Sarah Catherine Geers  
Electronic Notice

Connie Mueller  
Clerk of Circuit Court  
Ozaukee County Justice Center  
Electronic Notice

Brian K. Adams #492601  
Stanley Correctional Institution  
100 Corrections Dr.  
Stanley, WI 54768

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

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2025AP1152

State of Wisconsin v. Brian K. Adams (L.C. #2015CF87)

Before Gundrum, 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).**

Brian K. Adams, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2023-24)<sup>1</sup> postconviction motion. He argues the circuit court erred in denying his motion as procedurally barred. 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. We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

In March 2015, the State charged Adams with first-degree reckless homicide for causing the July 2014 death of a woman who overdosed on heroin obtained from Adams.<sup>2</sup> Adams agreed to plead guilty to the lesser charge of second-degree reckless homicide. At the plea hearing, however, when the circuit court attempted to confirm there was a factual basis to accept the plea, Adams refused to admit to the facts in the Complaint. The court then asked defense counsel to summarize the factual basis of the plea for the court. After counsel did so, the court asked Adams to confirm the basis, but Adams refused. The court then took a break to allow defense counsel to confer with Adams. When the proceeding resumed, the prosecutor immediately informed the court the plea agreement was being revoked. At that point, the following exchange occurred:

THE COURT: [D]id I hear correctly [that Adams] just indicated he wants to go to trial?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: He says yes, Your Honor.

The court then discussed setting a trial date. Adams told the court he wanted a new attorney, but after some discussion, Adams confirmed he would keep his current attorney. Although the Record does not indicate a reason, about a month after the failed plea hearing, the State Public Defender appointed a new attorney to represent Adams.

In May 2016, the case proceeded to a jury trial on the original charge of first-degree reckless homicide and the jury found Adams guilty. The circuit court thereafter sentenced Adams to 20 years' initial confinement followed by 5 years' extended supervision. In

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<sup>2</sup> See WIS. STAT. § 940.02(2)(a) (2013-14).

May 2017, Adams’s appellate counsel filed a no-merit appeal and Adams filed a response. We accepted the no-merit report, and after independently reviewing the Record, we concluded there were no meritorious issues to appeal and affirmed Adams’s judgment. *State v. Adams*, No. 2017AP209-CRNM, unpublished op. and order (WI App Nov. 22, 2017). In June 2018, our supreme court denied his petition for review.

In March 2025, Adams filed the pro se WIS. STAT. § 974.06 motion that is the subject of this appeal. The circuit court denied his motion, finding it was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), and also concluding there was no merit to his claims that: (1) the prosecutor breached the plea agreement when he revoked the agreement during the failed plea hearing; (2) the court erred in questioning whether there was a factual basis for his plea; and (3) he received ineffective assistance when his trial counsel failed to object to the alleged breach or the court’s questioning about the factual basis.

On appeal, Adams asserts his claims are not procedurally barred because he presents a sufficient reason for having failed to raise these errors in his no-merit appeal—that appellate counsel was ineffective for not raising the breach of the plea agreement issue. He also asserts the procedural bar should not apply because he claims the no-merit procedures were not followed.

Whether a defendant’s claim is procedurally barred and whether a sufficient reason exists for the failure to previously assert the claim present questions of law we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶¶9, 16, 331 Wis. 2d 640, 794 N.W.2d 920. We conclude WIS. STAT. § 974.06(4) and *Escalona-Naranjo* procedurally bar Adams’s claims.

WISCONSIN STAT. § 974.06(4) requires Adams “to raise all grounds regarding postconviction relief in his ... original, supplemental or amended motion” unless he

demonstrates a sufficient reason for failing to previously raise the issue. *See Escalona-Naranjo*, 185 Wis. 2d at 177, 185. The procedural bar applies even though Adams’s first postconviction proceeding was a no-merit appeal; in fact, “the no merit procedure affords a defendant greater scrutiny of a trial court record and greater opportunity to respond than in a conventional appeal.” *See State v. Tillman*, 2005 WI App 71, ¶18, 281 Wis. 2d 157, 696 N.W.2d 574. Adams “may not raise issues in a subsequent § 974.06 motion that he could have raised in response to a no-merit report, absent a ‘sufficient reason’ for failing to raise the issues earlier in the no-merit appeal.” *See State v. Allen*, 2010 WI 89, ¶¶3-5, 328 Wis. 2d 1, 786 N.W.2d 124. As long as the no-merit procedures are followed, the no-merit appeal bars successive appeals because we have not only reviewed the issues Adams and his counsel raised, but we have conducted our own independent review of the entire Record to determine if there were any meritorious issues. *See id.*, ¶58 (quoting *Anders v. California*, 386 U.S. 738, 744 (1967)).

Here, Adams’s basis for claiming the no-merit procedures were not followed is that neither this court nor his appellate counsel identified the claims he raises here relating to the failed plea hearing. But, Adams has the burden of proof and “must do more than identify an issue of arguable merit that the court of appeals did not discuss.” *See Allen*, 328 Wis. 2d 1, ¶83. “To satisfy the ‘sufficient reason’ standard, [Adams] must do something to ‘undermine our confidence’” in our prior decision. *See id.* One way to do so would be to identify “an issue of such obvious merit that it was an error” for us “not to discuss” that issue in our no-merit decision. *Id.* Adams has failed to meet his burden of proof.

The Record conclusively demonstrates there is no merit to his claim that either appellate counsel or this court overlooked an obviously meritorious issue, and our no-merit opinion demonstrates we followed the proper procedures. Specifically, we reviewed both the no-merit

report and Adams's response to the no-merit report, and we also conducted a full review of the Record before concluding there were no meritorious issues. See *State v. Adams*, No. 2017AP209-CRNM.

Although our decision did not specifically discuss the failed plea hearing issues, that is because Adams himself chose to go to trial, which eliminated the prior plea agreement as an issue altogether. Further, it is clear from the plea hearing transcript that there was no breach of the plea agreement and that the circuit court's questions about a factual basis for the plea were proper. This is so because before accepting a plea, the court has a duty "[t]o personally ascertain whether a factual basis exists to support the plea." *State v. Bangert*, 131 Wis. 2d 246, 262, 389 N.W.2d 12 (1986); WIS. STAT. § 971.08(1)(b). The court's questioning, which Adams challenges here, was simply the court fulfilling its required duties. In doing so, the court provided Adams multiple opportunities to satisfy it that a factual basis existed; however, he repeatedly refused to admit to the facts necessary for the court to accept his plea. Adams's claim that the court erred in asking questions to ascertain a factual basis for the plea is meritless.

As far as the State's decision to revoke the plea agreement after Adams refused multiple times to admit to a factual basis for the plea, there is no merit to a claim that this was a breach. A guilty plea "is not entered until it is accepted by the court." *State v. Waldman*, 57 Wis. 2d 234, 237, 203 N.W.2d 691 (1973). The circuit court could not accept Adams's guilty plea because *he* refused to admit to a factual basis. Adams's claim now that revoking the plea agreement under those circumstances—claiming he had detrimentally relied on the plea agreement—is frivolous. The Record conclusively shows Adams repeatedly refused to admit to

a factual basis *and* that Adams personally told the court he wanted to go to trial.<sup>3</sup> And, because there is no merit to these issues, his claim that trial counsel should have objected to the court’s questioning and asserted the prosecutor’s revocation of the plea agreement constituted a breach are also without merit. *See State v. Dalton*, 2018 WI 85, ¶53, 383 Wis. 2d 147, 914 N.W.2d 120 (counsel’s failure to raise meritless challenge is not ineffective assistance).

We conclude Adams has failed to prove the no-merit procedure was not followed. Therefore, Adams’s claims related to the plea hearing, alleged breach of the plea agreement, and ineffective assistance of his counsel for not objecting to an alleged breach are all procedurally barred and we therefore do not address them further.<sup>4</sup>

Adams’s final claim is that he presented a sufficient reason to overcome the procedural bar. Namely, he asserts his appellate counsel was ineffective for filing the no-merit appeal instead of filing a postconviction motion to assert the failed plea hearing issues discussed herein. These claims are not supported by adequate facts or legal citations, and we will not consider them. *See State v. Pettit*, 171 Wis. 2d 627, 646–47, 492 N.W.2d 633 (Ct. App. 1992) (“[T]he Court of Appeals of Wisconsin is a fast-paced, high-volume court” that does not “serve as both advocate and judge.”); *Gaethke v. Pozder*, 2017 WI App 38, ¶21, 376 Wis. 2d 448, 899 N.W.2d 381 (appellate courts need not address undeveloped arguments). Moreover, as discussed above,

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<sup>3</sup> Adams argues the circuit court should have accepted trial counsel’s statements about the factual basis for the plea. But, after trial counsel’s statement on the factual basis, Adams refused to confirm on that basis.

<sup>4</sup> Adams waited almost seven years to file his WIS. STAT. § 974.06 motion claiming we missed a meritorious issue in our no-merit decision. Our supreme court instructs that lengthy delays such as these will not constitute a sufficient reason to avoid the procedural bar. *See State v. Allen*, 2010 WI 89, ¶¶72-76, 328 Wis. 2d 1, 786 N.W.2d 124. Like in *Allen*, Adams’s entire argument rests on his claim that the issues he raises have merit. They do not.

there is no merit to the issues Adams presents relating to a failed plea agreement Adams himself rejected in favor of going to trial. An ineffective assistance of appellate counsel claim based on the same claims we have concluded lack merit is also meritless.<sup>5</sup>

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.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>5</sup> We also note that in his Reply brief, Adams asks that we remand his case for resentencing. Any challenge to the sentence is procedurally barred as we concluded in the no-merit appeal that the circuit court properly exercised its sentencing discretion and there was no merit to challenging the sentence. *See State v. Adams*, No. 2017AP209-CRNM, unpublished op. and order (WI App Nov. 22, 2017).