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DISTRICT III

June 16, 2026

To:

Hon. Jeffery L. Anderson
Circuit Court Judge
Electronic Notice

Sharon Jorgenson
Clerk of Circuit Court
Polk County Justice Center
Electronic Notice

Sarah Catherine Geers
Electronic Notice

Scott Allen Youngmark 603014
Wisconsin Secure Program Facility
1101 Morrison Drive
Boscobel, WI 53805

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

2024AP903 State of Wisconsin v. Scott Allen Youngmark
(L. C. No. 2012CF462)

Before Stark, P.J., Hruz, and Gill, 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).

Scott Youngmark appeals from an order that denied his WIS. STAT. § 974.06 (2023-24)[1] motion for plea withdrawal based upon multiple claims of circuit court error and ineffective assistance of counsel. In addition to raising several arguments regarding the merits of his plea withdrawal motion, Youngmark contends that the court erroneously exercised its discretion by refusing to appoint counsel to represent him on the motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See*

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

WIS. STAT. RULE 809.21. We affirm on the grounds that Youngmark was not entitled to counsel and that the issues raised in the plea withdrawal motion were procedurally barred by the prior proceedings in which Youngmark sought plea withdrawal.

The State initially charged Youngmark with first-degree intentional homicide in relation to the death of his live-in girlfriend by blunt and sharp force trauma. Among the supporting facts cited in the complaint and later at the plea hearing were that Youngmark had called 911 to report that the victim was seriously injured; that Youngmark had the victim's blood on his hands, feet, and clothes; and that Youngmark told his mother shortly after the murder, "I did something bad," "I think I killed her," and "I can't believe I did this, I hope she is not dead." Youngmark eventually pled guilty to a reduced charge of second-degree intentional homicide, and the circuit court imposed the maximum available sentence of 40 years' initial confinement followed by 20 years' extended supervision.

Youngmark's postconviction and appellate attorney filed a no-merit appeal and report.[2] This court found that the circuit court conducted a plea colloquy that adequately informed Youngmark of the elements of the offense, the penalties that could be imposed, and the constitutional rights that Youngmark would be waiving by entering his plea. The circuit court further ascertained that medications Youngmark was taking for bipolar disorder did not interfere with his ability to understand the proceedings, that there was a factual basis to support the plea, and that Youngmark was aware that by entering his guilty plea before his pretrial suppression motions were decided that he was waiving the right to pursue those motions.

[2] The no-merit appeal was consolidated with another case that is not before us in this appeal.

In a response to the no-merit report, Youngmark claimed that he should be allowed to withdraw his plea because his trial counsel provided constitutionally ineffective assistance by failing to file an additional suppression motion alleging a violation of Youngmark's ***Miranda***[3] rights and by failing to pursue a voluntary intoxication defense. However, this court determined that trial counsel was not ineffective because the facts alleged by Youngmark would not support either a ***Miranda*** claim or a voluntary intoxication defense.

After this court affirmed his conviction, Youngmark filed the pro se plea withdrawal motion that is the subject of this appeal, accompanied by a motion to appoint counsel. The circuit court declined to appoint counsel under ***State v. Dean***, 163 Wis. 2d 503, 512-13, 471 N.W.2d 310 (Ct. App. 1991), because Youngmark had not shown that he first followed the procedure for seeking an appointment of counsel from the Office of the State Public Defender (SPD). Following a ***Machner***[4] hearing, at which Youngmark and his trial counsel testified, the court denied Youngmark's plea withdrawal motion.

Youngmark's first claim on appeal is that the circuit court improperly refused his request for counsel at the ***Machner*** hearing. Youngmark asserts that he did, in fact, first ask the SPD to appoint counsel, and the record contains a letter from the SPD stating that it declined to appoint counsel because Youngmark's proposed issues did not meet its criteria for having a reasonable chance of success, being of statewide importance to the development of criminal law, or being so complex as to require representation.

[3] *See* ***Miranda v. Arizona***, 384 U.S. 436, 458 (1966).

[4] *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

As the State correctly points out, the right to have counsel appointed in a criminal case "extends to the first appeal of right, and no further." ***Pennsylvania v. Finley***, 481 U.S. 551, 555 (1987). There is no constitutional right to counsel for postconviction motions under WIS. STAT. § 974.06. ***State ex rel. Warren v. Schwarz***, 219 Wis. 2d 615, 648-49, 579 N.W.2d 698 (1998); *see also* § 974.06(6) (motions raising collateral attacks on a conviction under § 974.06 are treated as civil matters). Any appointment of counsel for Youngmark by the circuit court in these circumstances would have been entirely discretionary, and Youngmark has not shown that he met any of the criteria for a discretionary appointment beyond indigency.

Youngmark next reiterates claims from his WIS. STAT. § 974.06 motion that he should be allowed to withdraw his plea because: (1) he was intoxicated at his plea hearing and when he discussed the plea with his trial counsel; (2) the circuit court failed to adequately explain the elements of second-degree intentional homicide to him; (3) his trial counsel failed to adequately explain the elements of second-degree intentional homicide to him; (4) his trial counsel failed to provide him with copies of his discovery materials; (5) his trial counsel failed to investigate the crime scene evidence; (6) his trial counsel coerced him into accepting the plea by advising him that if he went to trial he would be convicted and would be serving life without extended supervision; (7) his trial counsel failed to obtain a psychiatric evaluation for him to determine whether an NGI plea would be viable; (8) his postconviction counsel provided ineffective assistance by failing to raise claims of ineffective assistance of trial counsel before filing a no-merit appeal; and (9) this court failed to fully examine the record on Youngmark's no-merit appeal.

The State claims that all of the first eight issues Youngmark is now attempting to raise are procedurally barred because he either did or could have raised them during his no-merit

appeal. Any issue which either was or could have been raised in a direct appeal cannot be the basis for a subsequent postconviction motion under WIS. STAT. § 974.06, unless there was a sufficient reason for failing to raise the issue earlier. ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). The procedural bar of ***Escalona-Naranjo*** may be applied to a defendant whose direct appeal was processed under the no-merit procedures set forth in WIS. STAT. RULE 809.32, so long as the no-merit procedures were in fact followed and the record demonstrates a sufficient degree of confidence in the result. ***State v. Tillman***, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574.

The file from ***State v. Youngmark***, No. 2014AP946-CRNM, unpublished slip op. (WI App Nov. 1, 2016), shows that the proper no-merit procedures were followed during Youngmark's prior appeal. Youngmark was afforded the opportunity to submit a response to counsel's no-merit report, and he did so. This court then engaged in an independent review of the record, and we concluded that Youngmark's guilty plea and sentence were both valid and that all other nonjurisdictional issues had been waived by the plea. Nothing in our current review of the record undermines our confidence in those conclusions.[5] We therefore conclude

[5] In ***State v. Fortier***, 2006 WI App 11, ¶¶24-27, 289 Wis. 2d 179, 709 N.W.2d 893 (2005), we reasoned that the failure of either counsel or this court to address an issue of "evident" merit led to the conclusion that the no-merit procedures had not been adequately followed so as to warrant confidence in the outcome of the appeal. The Wisconsin Supreme Court appears to have approved this logic when it noted that a defendant may not be barred from raising an issue that the court of appeals and appellate counsel "*should* have found." ***State v. Allen***, 2010 WI 89, ¶63, 328 Wis. 2d 1, 786 N.W.2d 124. It is therefore implicit in our statement that we retain confidence in the outcome of the no-merit proceeding that we do not share Youngmark's view of the merits of the evidentiary issue that he now seeks to raise. To address in detail why that is the case, however, would undermine the judicial efficiency that is supposed to be achieved by applying the procedural bar of ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

that Youngmark's ninth issue—that we failed to fully examine the record on his no-merit appeal—is without merit.

Furthermore, Youngmark has not provided any sufficient reason why he did not raise the other issues which are the subject of his current WIS. STAT. § 974.06 motion in a response to the no-merit report.[6] We therefore agree with the State that Youngmark is procedurally barred from raising the first eight issues he has set forth in his § 974.06 motion and his brief on appeal.

Upon the foregoing,

IT IS ORDERED that the postconviction order is summarily affirmed. 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

[6] When the viability of a defendant's WIS. STAT. § 974.06 motion hinges on a claim that postconviction counsel was ineffective, the defendant must make allegations sufficient to establish both deficient performance and prejudice under the standard set forth in ***Strickland v. Washington***, 466 U.S. 668 (1984). ***State v. Balliette***, 2011 WI 79, ¶63, 336 Wis. 2d 358, 805 N.W.2d 334.