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DISTRICT II

July 15, 2026

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Electronic Notice

Sarah Burgundy
Electronic Notice

Kayla Bembenek
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Rodolfo Garcia #312705
Oshkosh Correctional Institution
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2025AP1416

State of Wisconsin v. Rodolfo Garcia (L.C. #2016CF164)

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).

Rodolfo Garcia appeals pro se from an order denying his 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 (2023-24).¹ For the following reasons, we affirm.

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

BACKGROUND

Garcia pled guilty to repeated first-degree sexual assault of a child, and in 2017, the circuit court sentenced him to 15 years of confinement followed by 10 years of extended supervision. Garcia appealed, his appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32, and Garcia filed a response to counsel's report. In his response, Garcia raised various issues, including claims that his plea was defective, the circuit court improperly considered his immigration status in sentencing him, the State breached the plea agreement by referencing Garcia's immigration status during its sentencing recommendation, and his trial counsel was ineffective in numerous ways due to counsel's pre- and post-plea failures. *State v. Garcia*, No. 2017AP21820-CR, unpublished op. and order (WI App Jan. 2, 2020). Counsel filed a supplemental no-merit report. *Id.* Upon consideration of counsel's no-merit reports and Garcia's response, we summarily affirmed the judgment, concluding there were no issues that had arguable merit for appeal. See WIS. STAT. RULE 809.21.

In March 2025, Garcia filed a WIS. STAT. § 974.06 postconviction motion asserting that the State breached the plea agreement when the prosecutor mentioned at the sentencing hearing the PSI writer's sentencing recommendation and that trial counsel was ineffective for failing to object to the mention of the recommendation. The circuit court did not hold a *Machner*² hearing but instead determined based on the plea and sentencing transcripts that "the State made the recommendation which was set forth in the [s]tatement of [n]egotiated [p]lea." The court concluded the prosecutor's mere recitation of the PSI recommendation did not constitute a breach of the agreement and because of this, trial counsel did not perform ineffectively for

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

failing to object to the recitation. The court denied Garcia’s postconviction motion, and he now appeals.

DISCUSSION

On appeal, Garcia raises the same issues he raised before the circuit court. We affirm, but on the basis that Garcia is barred from bringing this postconviction motion.

“We need finality in our litigation.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Because of this need, the law holds that any claim that could have been raised in a prior postconviction motion or on direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant demonstrates a sufficient reason for failing to raise the claim earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185; see WIS. STAT. § 974.06(4). This is so even if appellate counsel followed the no-merit procedures of WIS. RULE 809.32. *State v. Allen*, 2010 WI 89, ¶59, 328 Wis. 2d 1, 786 N.W.2d 124 (“[W]hether [a defendant] responds to a no-merit report or not, he is barred from raising a claim in a subsequent § 974.06 motion, absent a sufficient reason.”). We decide de novo whether the defendant demonstrated a sufficient reason for failing to previously raise the claim. *State v. Kletzien*, 2011 WI App 22, ¶16, 331 Wis. 2d 640, 794 N.W.2d 920.

A “[d]efendant[] must, at the very minimum, allege a sufficient reason ... to overcome the *Escalona-Naranjo* bar.” *Allen*, 328 Wis. 2d 1, ¶46. Garcia failed this basic requirement, asserting no reason at all. Additionally, although the State raised *Escalona-Naranjo* in its

response brief, Garcia failed to even acknowledge it in his reply brief.³ Without a sufficient reason for his failure to previously raise the breach-of-the-plea-agreement claim he raises in his postconviction motion, his claim is procedurally barred. See WIS. STAT. § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 180.

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

³ See *United Co-op v. Frontier FS Co-Op.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (2007) (concluding a party's failure to address a topic in a reply brief may be taken as a concession).