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DISTRICT III

August 25, 2026

To:

Hon. Luke M. Wagner
Circuit Court Judge
Electronic Notice

Nicholas DeSantis
Electronic Notice

Katie Schalley
Clerk of Circuit Court
Dunn County Judicial Center
Electronic Notice

Ted Lopez 489119
Wisconsin Secure Program Facility
1101 Morrison Drive
Boscobel, WI 53805

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

2025AP466

State of Wisconsin v. Ted Lopez (L. C. No. 2016CF220)

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).

Ted Lopez, pro se, appeals from an order that denied his WIS. STAT. § 974.06 (2023-24)¹ motion for postconviction relief. 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 summarily affirm on the ground that all of the claims in Lopez's motion are procedurally barred, pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

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

In 2018, following a jury trial, Lopez was convicted of repeated sexual assault of the same child, two counts of child enticement, exposing a child to harmful material, causing mental harm to a child, and first-degree sexual assault of a child. Lopez was sentenced to a total of 36 years of initial confinement followed by 17 years of extended supervision.

Lopez, by counsel, filed a direct appeal challenging several of the circuit court's evidentiary rulings. On January 10, 2023, this court issued a per curiam opinion rejecting each of Lopez's arguments and affirming his judgment of conviction. See *State v. Lopez*, No. 2020AP1840-CR, unpublished slip op. (WI App Jan. 10, 2023). The Wisconsin Supreme Court denied Lopez's petition for review.

In July 2025, Lopez filed a 99-page pro se motion for postconviction relief in the circuit court, pursuant to WIS. STAT. § 974.06. Lopez argued that his appellate counsel was constitutionally ineffective by failing to raise ten issues on direct appeal: (1) trial counsel's failure to raise "all issues of merit"; (2) trial counsel's failure to request a mistrial due to an underrepresentation of "recognizable minority groups" on the jury; (3) trial counsel's failure to object "to the jury commission ... or clerk of court for negligence in the jury selection process, array of the jury, the jury venire, and ... jury selection as a whole"; (4) prosecutorial misconduct for allowing Lopez's ex-girlfriend to make "[i]nflammatory statements" during her testimony; (5) trial counsel's failure to request a curative instruction regarding Lopez's ex-girlfriend's inflammatory statements; (6) trial counsel's failure to ask Carter²—the victim in a different case against Lopez—certain impeachment questions during the trial; (7) trial counsel's failure to

² We refer to this individual using a pseudonym. See WIS. STAT. RULE 809.86(4).

“directly challenge” Carter; (8) trial counsel’s failure to adequately impeach Carter’s mother, another trial witness; (9) prosecutorial misconduct for not correcting “inflammatory statements” made by Carter’s mother; and (10) trial counsel’s failure to object to the jury instructions’ definition of reasonable doubt.

The circuit court denied Lopez’s WIS. STAT. § 974.06 motion without a hearing. The court concluded that the allegations in the motion “are conclusory and do not specify how a different result would have occurred.” Lopez now appeals.

We conclude that the circuit court did not err by denying Lopez’s WIS. STAT. § 974.06 motion without a hearing because all of the claims in the motion are procedurally barred. See **State v. Allen**, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (stating that a court may deny a postconviction motion without a hearing if the record conclusively demonstrates that the defendant is not entitled to relief). No claim that could have been raised in a previously filed postconviction motion or direct appeal can be the basis for a subsequent § 974.06 motion unless the court finds that there was a sufficient reason for the defendant’s failure to raise the claim in the earlier proceeding. **Escalona-Naranjo**, 185 Wis. 2d at 185; see also § 974.06(4). “Whether a ... § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law subject to de novo review.” **State v. Romero-Georgana**, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

In his WIS. STAT. § 974.06 motion, Lopez acknowledged that his current claims “certainly could have been raised in his direct appeal.” He asserted, however, that his appellate counsel was constitutionally ineffective by failing to raise his current claims. Ineffective assistance of appellate counsel may be a sufficient reason for failing to raise an available claim

on direct appeal. *Romero-Georgana*, 360 Wis. 2d 522, ¶36. However, a defendant who asserts that his or her appellate counsel was ineffective for failing to raise an issue on direct appeal must show that the issue was “clearly stronger” than the issues counsel did present. *Id.*, ¶45 (citation omitted).

Lopez did not assert in his WIS. STAT. § 974.06 motion—much less develop any argument—that the issues raised in the motion were clearly stronger than the issues appellate counsel raised on direct appeal. Lopez’s motion therefore failed to show that appellate counsel was ineffective by failing to raise Lopez’s current claims. As a result, Lopez’s motion did not provide a sufficient reason for his failure to raise those claims on direct appeal.

In his reply brief on appeal, Lopez asserts for the first time that some of the issues raised in his WIS. STAT. § 974.06 motion are “stronger” than the issues raised on direct appeal. However, this court need not address arguments that were raised for the first time on appeal or arguments raised for the first time in a reply brief. See *Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810; *A.O. Smith Corp. v. Allstate Ins.*, 222 Wis. 2d 475, 492, 588 N.W.2d 285 (Ct. App. 1998). In any event, Lopez simply asserts in his reply brief that some of his current claims are “stronger” than those raised on direct appeal, without analyzing the comparative merits of the original claims in relation to the new claims. Lopez has therefore failed to present a developed argument showing why his current claims are clearly stronger than the claims raised on direct appeal. This court need not address undeveloped arguments, see *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992), and we decline to do so here.

Therefore,

IT IS ORDERED that the 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