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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT III

September 15, 2026

To:

Hon. Timothy A. Hinkfuss
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Nicholas DeSantis
Electronic Notice

Anthony Dewayne Oliver 120103
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:

2024AP900

State of Wisconsin v. Anthony Dewayne Oliver
(L. C. No. 2017CF1810)

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).

Anthony Dewayne Oliver, pro se, appeals an order denying 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 Oliver's motion are procedurally barred.

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

In August 2019, a jury found Oliver guilty of armed robbery and aggravated battery with use of a dangerous weapon. The circuit court sentenced Oliver to a total of 20 years' initial confinement followed by 10 years' extended supervision. Oliver's appointed appellate attorney subsequently filed a no-merit report, and Oliver filed multiple responses to the no-merit report. After reviewing the no-merit report and Oliver's responses, as well as conducting an independent review of the record, this court concluded that there were no issues of arguable merit for appeal.

More specifically, we agreed with appellate counsel's analysis and conclusions that there were no issues of arguable merit related to pretrial proceedings; Oliver's waiver of his right to testify; the sufficiency of the evidence; and the circuit court's exercise of its sentencing discretion. We further concluded that there was no arguable merit to various claims raised by Oliver in his responses to the no-merit report, including that his trial attorney was constitutionally ineffective; that the DNA surcharges imposed by the circuit court were punitive; that the State had committed a *Brady*² violation by failing to turn over a relevant transcript; and that Oliver's arrest was the result of the police using his probation agent as a "stalking horse." We also determined that there was no arguable merit to an additional issue that was not raised in the no-merit report—namely, whether Oliver's trial attorney should have objected on hearsay grounds to the admission of an officer's testimony about a phone call that Oliver made from jail. Finally, we stated that our independent review of the record "reveal[ed] no other potential issues of arguable merit." Accordingly, we summarily affirmed Oliver's judgment of conviction.

² See *Brady v. Maryland*, 373 U.S. 83 (1963).

In January 2024, Oliver filed the WIS. STAT. § 974.06 motion that is at issue in this appeal. In the motion, Oliver argued that his trial attorney was constitutionally ineffective by failing to object to “the prosecutor’s misconduct during opening statements and closing arguments” and by allowing the prosecutor “to use evidence that was inadmissible” and “evidence that was obtained by an unconstitutional search and seizure.” Oliver also asserted claims based on the “unconstitutional suppression of evidence by the State” and the State’s “use ... of testimony known ... to be perjured.”

In March 2024, the circuit court issued a written order denying Oliver’s WIS. STAT. § 974.06 motion without a hearing. The court concluded that all of Oliver’s claims were procedurally barred because they could have been raised on direct appeal and because Oliver had offered “no explanation” for his failure to do so. Oliver now appeals.

We conclude that the circuit court did not err by denying Oliver’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). Whether a defendant’s claims are procedurally barred is a question of law that we review de novo. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

As an initial matter, we note that “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). As such, to the extent Oliver attempted to raise claims in his WIS. STAT. § 974.06 motion that were

previously addressed in his no-merit appeal, those claims are procedurally barred. In particular, we note that Oliver’s current claim alleging “unconstitutional suppression of evidence by the State” may be duplicative of the claim that we addressed and rejected in his no-merit appeal that the State committed a **Brady** violation by failing to turn over a relevant transcript.

Furthermore, no claim that could have been raised in a previously filed postconviction motion or on direct appeal can be the basis for a subsequent WIS. STAT. § 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. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994); § 974.06(4). The procedural bar may be applied to a defendant whose direct appeal was processed under the no-merit procedures set forth in WIS. STAT. RULE 809.32, as 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.

Here, the record shows that the proper procedures were followed during Oliver’s no-merit appeal. Oliver was afforded the opportunity to submit a response to appellate counsel’s no-merit report, and he did so. In fact, he submitted multiple responses to the no-merit report. This court then engaged in an independent review of the record and concluded that none of the issues raised in the no-merit report or in Oliver’s responses to the no-merit report had arguable merit. We further concluded that the record did not reveal any other arguably meritorious issues

for appeal. Nothing in our current review of the record undermines our confidence in those conclusions.³

Aside from arguing that the no-merit procedures were not followed during his no-merit appeal—an argument that we have rejected—Oliver has not offered any sufficient reason for his failure to raise the arguments set forth in his WIS. STAT. § 974.06 motion on direct appeal. Under these circumstances, we agree with the State and the circuit court that all of the arguments in Oliver’s § 974.06 motion are procedurally barred. Accordingly, we affirm the court’s order denying the motion without a hearing.⁴

³ 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 appellate 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” during a no-merit proceeding. See *State v. Allen*, 2010 WI 89, ¶63, 328 Wis. 2d 1, 786 N.W.2d 124.

Here, it is implicit in our statement that we retain confidence in the outcome of Oliver’s no-merit appeal that we do not share Oliver’s view of the merits of the issues that he now seeks to raise. Stated differently, we do not view Oliver’s current claims as having “evident” merit or as being issues that this court or appellate counsel “*should* have found.” See *Fortier*, 289 Wis. 2d 179, ¶24; *Allen*, 328 Wis. 2d 1, ¶63. However, to address in detail why that is the case 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).

⁴ Alternatively, Oliver asks this court to construe his appellate briefs as a petition for a writ of habeas corpus pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). We decline to do so. If Oliver wishes to pursue a claim that his appointed appellate attorney was constitutionally ineffective, he may do so by filing a *Knight* petition in this court.

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