

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 26, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP1447

Cir. Ct. No. 2003CF1965

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE H. REYNOSA,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
THOMAS J. McADAMS, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jose Reynosa appeals orders denying his motion to withdraw his guilty pleas and his motion for reconsideration. The circuit court denied the motions on the merits without a hearing. We exercise our right to affirm the circuit court's decisions on other grounds. See *State v. Trecroci*, 2001

WI App 126, ¶45, 246 Wis. 2d 261, 630 N.W.2d 555. We conclude Reynosa's motions failed to establish a jurisdictional basis for the circuit court to consider the merits of his arguments.

¶2 In 2003, Reynosa entered guilty pleas to one count of felon in possession of a firearm and one count of carrying a concealed weapon. On the felon-in-possession charge, the court imposed and stayed a sentence of sixteen months' initial confinement and twenty months' extended supervision and placed Reynosa on three years' probation, consecutive to a nine-month sentence on the concealed weapon charge. In 2015, Reynosa filed the present motions seeking to withdraw his guilty pleas based on ineffective assistance of trial counsel. The initial motion included a jurisdictional statement, "This motion is pursuant to Wis. Stat. 971.08(1)(a)," and in a footnote further explained, "This is not a motion under Wis. Stat. § 974.06, and Reynosa requests that this court **not** construe it as one because if it needs to be one this motion is not complete" (Emphasis in the original.)¹ The circuit court nonetheless properly concluded it was a motion under WIS. STAT. § 974.06 because § 971.08(1)(a) does not create a procedural mechanism for challenging existing judgments of conviction. After the circuit court denied the motion on the merits, Reynosa filed a motion for reconsideration, again providing no jurisdictional basis for the court to consider the merits. The court denied the motion for reconsideration on the merits without a hearing.

¶3 The circuit court may deny a postconviction motion without a hearing if the motion fails to allege detailed facts on its face which, if true, would entitle the defendant to relief. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

50 (1996). We review only the allegations contained in the four corners of Reynosa's motions, not any additional allegations contained in his briefs. *See State v. Allen*, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433. Whether the motions present sufficient grounds for relief is a question of law that we review de novo. *Bentley*, 201 Wis. 2d at 310.

¶4 Under WIS. STAT. § 974.06, a defendant is allowed to attack sentences already served only if he or she is currently serving a sentence that is directly affected by the previous convictions. *State v. Theoharopoulos*, 72 Wis. 2d 327, 330, 240 N.W.2d 635 (1976). The circuit court lacks subject matter jurisdiction to hear a motion under § 974.06 if the defendant is no longer in custody in connection with the conviction challenged in the motion. *Jessen v. State*, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980). Because Reynosa's 2003 sentences appear to have been completely served at the time he filed the present motions, the motions were deficient on their face for failing to establish he was currently serving a sentence directly affected by these convictions.

¶5 For the first time in his reply brief on appeal, Reynosa attempts to establish his continued detention in connection with these crimes. He does so by impermissibly citing facts outside the record that should have been included within the four corners of the postconviction motions. *See State v. Brown*, 2006 WI 100, ¶42, 293 Wis. 2d 594, 716 N.W.2d 906. Because Reynosa's motions failed to establish his continued custody in connection with these offenses, the motions were facially insufficient to establish the circuit court's jurisdiction to hear the motions. Therefore, the motions were properly denied without a hearing.

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

