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**DISTRICT I**

March 18, 2025

To:

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Circuit Court Judge  
Electronic Notice

Rafael Jose Torres-Rodriguez  
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Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
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Kathleen E. Wood  
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Bernard M. Jackson  
18402 Torrence Avenue  
Lansing, IL 60438

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

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2023AP1649

State of Wisconsin v. Bernard M. Jackson (L.C. # 2020CF2836)

Before White, C.J., Donald, P.J., and Geenen, J.

**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).**

Bernard M. Jackson, *pro se*, appeals an order of the circuit court denying his WIS. STAT. § 974.06 (2023-24)<sup>1</sup> postconviction motion in which he seeks resentencing. He also appeals from the order denying his motion for reconsideration. 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.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version unless otherwise noted.

In November 2020, Jackson pled guilty to one count of third-degree sexual assault. Pursuant to the plea agreement, this charge was reduced from second-degree sexual assault, and an additional charge of false imprisonment was dismissed and read in at sentencing. The circuit court accepted Jackson's plea and imposed an evenly bifurcated eight-year sentence.

Jackson, by counsel, filed a postconviction motion arguing that he was sentenced based on inaccurate information. In support, he cited several remarks and observations made by the circuit court at sentencing that he deemed to be inaccurate, including that: the court mistakenly interpreted Jackson's comment during allocution calling the assault a "mistake" on his part as an attempt to shift blame to the victim; the court misinterpreted character letters submitted on his behalf as reflecting that the authors thought Jackson was younger than thirty-nine years old; the court made comments regarding the victim's trauma from the assault that were unsupported; and the court accused Jackson of "almost challenging" the victim to call police, when it was actually Jackson's girlfriend who made the comment to which the court was referring. Jackson further argued that the court failed to adequately consider relevant sentencing factors. The circuit court denied the postconviction motion, and a motion for reconsideration. This court affirmed. *See State v. Jackson*, No. 2021AP1544-CR, unpublished slip op. ¶1 (WI App Jan. 24, 2023). Jackson's petition for review by our supreme court was denied.

Jackson subsequently filed the WIS. STAT. § 974.06 motion underlying this appeal. In this motion, he again argues that he was sentenced on inaccurate information. However, he cites a different inaccuracy than those asserted in his first postconviction motion on his direct appeal—that the prosecutor stated during the sentencing hearing that he had been in prison twice, while Jackson contends that he was only incarcerated in prison once, and was otherwise housed

at a county jail. Jackson further asserts that his postconviction counsel was ineffective for failing to raise that claim.

The circuit court denied Jackson's WIS. STAT. § 974.06 motion on the grounds that it was procedurally barred. The court observed that Jackson offered no analysis that the current issues he raises in his § 974.06 motion are clearly stronger than those raised in his direct appeal. It also found that Jackson's claims failed on the merits. The court stated that it had considered Jackson's prior record, not his specific place of confinement, in imposing his sentence. It therefore determined that any error was harmless.

We conclude that Jackson's claims are procedurally barred. In a motion brought under WIS. STAT. § 974.06, a defendant must demonstrate that there is a "sufficient reason" that the claims in that motion were not raised in a prior motion or direct appeal. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Whether a § 974.06 motion alleges a sufficient reason "for failing to bring available claims earlier" is a question of law that we review *de novo*. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

"In some instances, ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal." *Id.*, ¶36. However, "a defendant who alleges in a [WIS. STAT.] § 974.06 motion that his postconviction counsel was ineffective for failing to bring certain viable claims must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought." *Id.*, ¶4. "The 'clearly stronger' standard is appropriate when postconviction counsel raised other

issues before the circuit court, thereby making it possible to compare the arguments now proposed against the arguments previously made.” *Id.*, ¶46.

As the circuit court noted, Jackson offers no analysis comparing his current claims to those brought by his postconviction counsel in his direct appeal to demonstrate the “clearly stronger” standard. Instead, Jackson argues that his claims are not procedurally barred because this is his first WIS. STAT. § 974.06 motion. Jackson misconstrues the law surrounding the procedural bar. As our supreme court observed, the “plain language” of § 974.06(4) “requires a sufficient reason to raise a constitutional issue in a sec. 974.06 motion that could have been raised on direct appeal or in a sec. 974.02 motion.” *Escalona-Naranjo*, 185 Wis. 2d at 185 (emphasis omitted).

In short, a defendant is precluded from raising any claim in a WIS. STAT. § 974.06 motion if that claim could have been brought on direct appeal, *see Escalona-Naranjo*, 185 Wis. 2d at 185, unless he or she can demonstrate that the claim is “clearly stronger” than the claims appellate counsel previously brought, *see Romero-Georgana*, 360 Wis. 2d 522, ¶4. If the defendant cannot establish that claims brought under § 974.06 are clearly stronger, then the claims are procedurally barred. *Romero-Georgana*, 360 Wis. 2d 522, ¶6. Jackson has not met—or even argued—the clearly stronger standard. His claims in his § 974.06 motion are therefore barred. Accordingly, we affirm the orders of the circuit court denying his § 974.06 motion and motion for reconsideration.

Upon the foregoing, therefore,

IT IS ORDERED that the orders are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*