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DISTRICT II

September 17, 2025

To:

Hon. Frank M. Gagliardi
Circuit Court Judge
Electronic Notice

Anne Christenson Murphy
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Chad J. Elliott #405113
Fox Lake Correctional Institution
W10237 Lake Emily Road
Fox Lake, WI 53933

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

2024AP1251

State of Wisconsin v. Chad J. Elliott (L.C. #2017CF78)

2024AP1252

State of Wisconsin v. Chad J. Elliott (L.C. #2017CF973)

Before Neubauer, P.J., Gundrum, 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).

In these consolidated appeals, Chad J. Elliott, pro se, appeals a circuit court order denying his WIS. STAT. § 974.06 (2023-24)¹ motion without a hearing. 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 affirm.

In broad strokes, Elliott misrepresented all aspects of his life to D.H. in order to enter into a romantic relationship with her and obtain access to her financial resources and other assets.

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

During this relationship, Elliott stole D.H.’s jewelry, pawned it, and then lied to police about it. He also obtained title to D.H.’s property through misrepresentations. He was convicted following a jury trial of theft of moveable property, obstruction, theft by misrepresentation, and bail jumping.

During trial, D.H. testified that once she learned Elliott’s true identity, she learned Elliott “had an extensive criminal history, that he had been in prison before for four years.” Elliott objected and moved to strike, and the circuit court granted the motion and gave a curative instruction. Elliott thereafter moved for a mistrial, and the court denied the motion. In his direct appeal, Elliott, by counsel, argued his trial was not fair and the court misused its discretion when it denied his motion for a mistrial. We rejected Elliott’s arguments and affirmed. *State v. Elliott*, Nos. 2020AP137-CR and 2020AP138-CR, unpublished slip op. and order (WI App Sept. 15, 2021).

Elliott subsequently filed the underlying WIS. STAT. § 974.06 motion in the circuit court, seeking to “vacate, set aside or correct the sentence.” In his motion, Elliott argued his postconviction/appellate counsel was ineffective for failing to bring a WIS. STAT. RULE 809.30 motion that raised claims of newly discovered evidence, prosecutorial misconduct, denial of counsel at a critical proceeding, and ineffective assistance of trial counsel. The court denied his motion without a hearing on the basis that his claims were procedurally barred and he failed to allege a sufficient reason for failing to raise these claims previously. Elliott appeals.

WISCONSIN STAT. § 974.06 is the primary statutory mechanism for a convicted person to pursue constitutional and jurisdiction challenges to a criminal conviction after the time for a direct appeal has passed. See *State v. Henley*, 2010 WI 97, ¶50, 328 Wis. 2d 544, 787 N.W.2d

350. The goal of § 974.06 is finality. *Henley*, 328 Wis. 2d 544, ¶53. Accordingly, § 974.06(4) includes a procedural hurdle requiring the person to present a sufficient reason for failing to raise the challenges in earlier motions or appeals. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). The ineffective assistance of postconviction/appellate counsel may be a sufficient reason for a failure to raise a claim in an original postconviction motion or a direct appeal. *See State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 542, 849 N.W.2d 668.

In order to prevail on a claim that postconviction/appellate counsel’s ineffectiveness was a sufficient reason why the issues were not previously raised, the defendant must prove both that his lawyer’s representation was deficient and that he suffered prejudice because of that deficient performance. *See id.*, ¶39; *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). To prove that postconviction/appellate counsel performed deficiently by not raising certain claims in a postconviction motion or a direct appeal, a defendant must show that the claims he or she contends counsel should have raised were “clearly stronger” than the claim(s) counsel raised. *Romero-Georgana*, 360 Wis. 2d 522, ¶45.

The purpose of the “clearly stronger” standard is to allow a court “to compare the arguments now proposed against the arguments previously made,” because if the new claims are not clearly stronger than the ones previously raised, postconviction or appellate counsel could not have performed deficiently by failing to bring those claims. *Id.*, ¶¶45-46. The “clearly stronger” standard also promotes finality in litigation and respects the professional judgment of postconviction/appellate attorneys to raise the best arguments on appeal. *See State v. Starks*, 2013 WI 69, ¶¶59-60, 349 Wis. 2d 274, 833 N.W.2d 146, *abrogated on other grounds by State ex rel. Warren v. Meisner*, 2020 WI 55, ¶60, 392 Wis. 2d 1, 944 N.W.2d 588.

Here, we conclude the circuit court properly denied Elliott’s WIS. STAT. § 974.06 motion without a hearing. Elliott’s claims relating to newly discovered evidence, prosecutorial misconduct, denial of counsel at a critical proceeding, and ineffective assistance of trial counsel were claims that could have been raised in the context of Elliott’s WIS. STAT. RULE 809.30 proceedings; however, they were not so raised. Accordingly, these claims are procedurally barred unless Elliott establishes a sufficient reason for failing to raise the claims in the earlier proceeding. *See* § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 185.

As for his sufficient reason, Elliott argues postconviction/appellate counsel was ineffective for failing to raise these claims within the context of his direct appeal. However, within his motion, Elliott fails to show or even allege that the claims he now wants to raise are “clearly stronger” than the claims counsel made in his direct appeal. Indeed, in his WIS. STAT. § 974.06 motion, Elliott argues postconviction/appellate counsel should have raised the original claims as well as the ones now identified by Elliott.² He has not satisfied the “clearly stronger” standard.

² He asserted in his WIS. STAT. § 974.06 motion that his postconviction/appellate counsel:

should have ... submit[ted] claims of: 1) New Evidence; 2) Prosecutorial Misconduct; 3) the 6th Amendment Violation in which Elliott was not represented at a pivotal stage in the proceeding(s); and 4) Ineffective Assistance of Counsel within a WIS. STAT. (RULE) 809.30 motion.

Elliott made every effort to assist appellate counsel of record in the creation of a meritorious filing which includes not only the one original claim, but the aforementioned four additional claims. The unprofessional act of appellate counsel of record left four additional non-frivolous claims abandoned. Therefore, counsel’s performance fell below an objective standard of reasonableness; and thus, is deficient.

Because Elliott did not establish that his newly identified issues were “clearly stronger” than the ones counsel did raise, he has not established postconviction/appellate counsel was deficient or ineffective. *See Romero-Georgana*, 360 Wis. 2d 522, ¶45. Elliott has not offered a sufficient reason for failing to raise these claims earlier, and his motion is procedurally barred. *See Escalona-Naranjo*, 185 Wis. 2d at 185.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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