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**DISTRICT IV**

September 25, 2025

*To:*

Hon. Nicholas J. Brazeau Jr.

Circuit Court Judge

Electronic Notice

Kathleen E. Wood

Electronic Notice

Kimberly Stimac

Clerk of Circuit Court

Wood County Courthouse

Electronic Notice

Darryl E. Mathews 685885

Racine Correctional Institution

P.O. Box 900

Sturtevant, WI 53177-0900

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

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2024AP1632

State of Wisconsin v. Darryl E. Mathews (L.C. # 2020CF283)

Before Graham, P.J., Kloppenburg, and Nashold, 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).**

Darryl E. Mathews appeals circuit court orders denying his postconviction motion to withdraw his guilty pleas and denying his motion for reconsideration of that decision. Based on 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 (2023-24).<sup>1</sup> Because Mathews' WIS. STAT. § 974.06 motion is procedurally barred, we summarily affirm.

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

The State charged Mathews with seven crimes as a result of his participating in a drug distribution ring. Pursuant to a plea agreement, Mathews pled guilty to two charges: (1) conspiracy to commit possession of methamphetamine with intent to deliver, greater than fifty grams, and (2) false imprisonment, as a party to the crime. The circuit court sentenced Mathews to a total of nine years of initial confinement and eight years of extended supervision for these offenses.

Mathews' postconviction counsel filed a no-merit report addressing multiple issues, including the validity of Mathews' pleas. *See Anders v. California*, 386 U.S. 738, 744 (1967); WIS. STAT. RULE 809.32. Counsel indicated that an appeal of the guilty pleas would be without merit because the circuit court engaged in the colloquy required by *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Specifically, the colloquy informed Mathews of the constitutional rights he was giving up, ensured that Mathews agreed that there were sufficient factual bases for the pleas, and ensured that Mathews understood the elements of the crimes to which he was pleading guilty. Mathews filed a response to the no-merit report raising some new issues, but he did not raise any issues related to the plea colloquy.

After counsel filed a supplemental no-merit report addressing Mathews' claims, this court affirmed Mathews' judgment of conviction. Based on our review of the materials submitted by both Mathews and his counsel, and after conducting our own independent review of the record, we concluded that there were no potential nonfrivolous issues for appeal. *State v. Mathews*, No. 2022AP935-CRNM, unpublished slip op. at 7 (WI App Mar. 14, 2024). With respect to Mathews' guilty pleas, we stated that the circuit court's plea colloquy, together with the plea questionnaire that Mathews signed, satisfied the court's duties and showed that the pleas were knowing, intelligent, and voluntary. *Id.* at 2-3.

Following that decision, Mathews filed a postconviction motion in the circuit court seeking to withdraw his pleas. He argued that the plea colloquy was defective because the court did not orally review with him the elements of the crimes to which he was pleading guilty. He also asserted that trial counsel improperly advised him of the elements, and that counsel attached the incorrect jury instruction for conspiracy to his plea questionnaire. The court denied Mathews' motion without a hearing, concluding that the plea colloquy was not defective and that the jury instruction attached to the plea questionnaire was "functionally equivalent" to the instruction that Mathews asserted should have been used. The court also denied Mathews' motion for reconsideration of its decision. Mathews appeals.

Although the circuit court denied Mathews' motion on the merits, the State asserts that his appeal is procedurally barred by this court's prior no-merit decision pursuant to WIS. STAT. § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Whether the appeal is procedurally barred is a question of law that we review de novo. *State v. Tillman*, 2005 WI App 71, ¶14, 281 Wis. 2d 157, 696 N.W.2d 574.

In *Escalona-Naranjo*, 185 Wis. 2d at 181, our supreme court explained that "all grounds for relief under [WIS. STAT. §] 974.06 must be raised in a petitioner's original, supplemental, or amended motion." Any ground not raised "in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion." *Id.* at 185 (emphasis omitted; quoting WIS. STAT. § 974.06(4)). In *Tillman*, 281 Wis. 2d 157, ¶19, we made clear that the procedural bar of *Escalona-Naranjo* may be applied when a prior appeal was conducted under the no-merit procedure:

[W]hen a defendant's postconviction issues have been addressed by the no[-]merit procedure under WIS. STAT. RULE 809.32, the

defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously.

As stated in *Tillman*, the procedural bar is not “ironclad.” *Id.*, ¶20. In considering whether to apply the procedural bar after a no-merit appeal, the court “must pay close attention to whether the no[-]merit procedures were in fact followed.” *Id.* Here, those procedures were followed: counsel filed a no-merit report explaining that, in counsel’s view, none of the various issues counsel identified—including the validity of the pleas—were grounds for a meritorious appeal; Mathews was given (and took) the opportunity to respond to the report; this court examined the report and conducted its own review of the record; and our no-merit decision addressed the potential issues—including the validity of Mathews’ pleas—and explained why the issues had no arguable merit. *See Wis. Stat. Rule 809.32*. Our review of the record gives us “a sufficient degree of confidence warranting the application of the procedural bar” under these facts and circumstances. *Tillman*, 281 Wis. 2d 157, ¶20.

Mathews does not point to any failure to follow the no-merit procedures by this court or his postconviction counsel. Nor does he provide a sufficient reason for overcoming the procedural bar. *See State v. Allen*, 2010 WI 89, ¶83, 328 Wis. 2d 1, 786 N.W.2d 124 (“To satisfy the ‘sufficient reason’ standard, the defendant must do something to undermine our confidence in the court’s decision.”). He makes only the conclusory assertion that it would be “unfair and unreasonable” to require him to have raised the issue of the validity of his pleas during his no-merit appeal. But in fact, counsel did raise the issue and this court addressed it in Mathews’ no-merit appeal; it cannot be re-asserted now. *See id.*; *see also State v. Witkowski*, 163 Wis. 2d 985, 992, 473 N.W.2d 512 (Ct. App. 1991) (“[A]ttempts to rephrase or re-theorize ... previously-litigated challenge[s] are of no avail.”).

We therefore affirm.

IT IS ORDERED that the orders of the circuit court are summarily affirmed.

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*