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DISTRICT IV

November 26, 2025

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Waupaca County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2023AP1069 State of Wisconsin v. John R. Martin (L.C. # 2006CF279)

Before Graham, P.J., Nashold, and Taylor, 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).

John R. Martin, by counsel, appeals a circuit court order that denied his motion for postconviction relief. Based on our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(2023-24).[1] We affirm.

Martin was convicted of one count of child enticement as a persistent repeater following a 2009 jury trial. The allegations were based on an account provided by A.B., who was a minor

[1] All references to the Wisconsin Statutes are to the 2023-24 version. The 2023-24 version of the child enticement statute has not materially changed from the version that was in effect in 2006 when Martin committed the crime.

at the time of the charged events.[2] A.B. testified that she was babysitting at an apartment unit next to the unit where Martin resided, and that Martin left several notes for her on a patio outside of Martin's unit. Martin stipulated that he had written the notes, which contained sexual content and were admitted as evidence at the trial. The prosecution argued that by writing the notes, Martin had attempted to cause A.B. "to go into any … building, room, or secluded place," and that he did so with the intent to have sexual contact with her. *See* WIS. STAT. § 948.07; WIS JI—CRIMINAL 2134A.

Martin filed his original motion for postconviction relief in 2010. Most importantly for purposes of this appeal, Martin argued that his trial counsel was constitutionally ineffective because counsel did not attempt to present evidence of A.B.'s "other acts," which would have challenged her credibility. The other acts evidence that counsel did not attempt to present was that A.B. had previously made an allegedly false accusation of sexual misconduct by another older married man, who we refer to as Y.Z., and that A.B. was given a warning by police for "obstructing [a] police investigation" based on the allegedly false accusation. Additionally, Martin's original postconviction motion argued that the prosecutor and several witnesses had improperly vouched for A.B.'s credibility, and that an instruction to the jury regarding the meaning of "secluded place" was erroneous and allowed the jury to return a guilty verdict without finding a necessary element of the crime.

[2] Pursuant to the policy underlying WIS. STAT. RULE 809.86, we refer to the victim and to another individual she accused of sexual misconduct using initials that do not conform to their actual names.

After holding a ***Machner*** hearing,[3] the circuit court denied Martin's original postconviction motion. We affirmed the judgment of conviction and postconviction order. ***State v. Martin***, No. 2010AP2811-CR, unpublished slip op. (Apr. 26, 2012). Regarding the issue of A.B.'s allegedly false accusation against Y.Z., we assumed without deciding that the evidence would have been admissible, and that trial counsel's failure to seek its admission was deficient performance. ***Id.***, ¶11. However, we concluded that Martin's ineffective assistance of counsel claim failed because Martin could not establish prejudice. ***Id.*** More specifically, we concluded that the notes that Martin passed to A.B. were sufficient to establish the elements of the child enticement charge, and we saw "no reasonable probability that the absence of this impeaching evidence altered the outcome of the trial." ***Id.***, ¶12. We also rejected Martin's other claims about improper vouching and the jury instructions. ***Id.***, ¶¶7-9, 13-14.

Nearly a decade later in June 2022, Martin, by newly retained counsel, filed the WIS. STAT. § 974.06 motion for postconviction relief that is the subject of this appeal. As with his original postconviction motion, this latest motion claimed that trial counsel was ineffective "because [counsel] failed to attempt to introduce other acts evidence against [A.B.] regarding her prior acts, failed to impeach [A.B.'s] testimony, and failed to impeach [A.B.'s] character." *See* ***Strickland v. Washington***, 466 U.S. 668 (1984) (setting forth standards for establishing ineffective assistance of counsel). The evidence that was the subject of this latest motion was the same evidence that was presented at the ***Machner*** hearing ten years earlier—namely, the

[3] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979). A ***Machner*** hearing is "[t]he evidentiary hearing to evaluate counsel's effectiveness, which includes counsel's testimony to explain [counsel's] handling of the case." ***State v. Balliette***, 2011 WI 79, ¶31, 336 Wis. 2d 358, 805 N.W.2d 334.

evidence regarding A.B.'s allegedly false accusation of Y.Z.[4] The latest motion argued that the evidence was admissible as other acts evidence under WIS. STAT. § 904.04(2) (other acts) or WIS. STAT. § 906.08(2) (evidence of specific instances of untruthfulness of a witness), and that trial counsel's failure to present this evidence was prejudicial. In addition, Martin also reraised the other two arguments that were advanced and rejected in his original postconviction motion and direct appeal: that the prosecutor and several witnesses had improperly vouched for A.B.'s credibility; that the circuit court's instruction to the jury regarding the meaning of "secluded place" was erroneous.

Although there appears to be little daylight between the claims in this latest postconviction motion and the claims that Martin made in his original postconviction motion, Martin asserted that the claims in his latest motion are "legally distinct, more comprehensive, and clearly stronger than the ***Strickland*** claims raised in his [original] postconviction motion and direct appeal." Regarding the claim about A.B.'s allegedly false prior accusation, which is the primary focus of his latest motion, Martin argued that his appointed postconviction counsel "failed to argue [in the original motion that Martin's] trial counsel was ineffective as described in [the latest motion]," and that postconviction counsel's ineffectiveness is a "sufficient reason" for Martin's failure to adequately raise the claim about A.B.'s allegedly false prior accusation in his original postconviction motion. Therefore, Martin argued, his claim surmounts the procedural

[4] The latest motion also asserted that A.B. made similar accusations against at least one other man, but it does not provide any reason to believe that the accusations were false.

bar set forth in WIS. STAT. § 974.06(4) and ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).[5]

The circuit court denied the current postconviction motion without holding an evidentiary hearing. As the court explained, the three issues that Martin raised in his latest motion were the same issues that were previously raised in his original postconviction motion and already rejected by the circuit court and this court on direct appeal. After discussing the claims in some detail, the court said: "I don't find that there's any new issues raised [and] to the extent that [there is] a new issue," it would fail on the merits. Therefore, the court determined, Martin was not entitled to a new trial.

On appeal, Martin renews the same arguments that he advanced in the circuit court. We conclude that Martin's latest claims are barred by a combination of the holdings in ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991), and ***Escalona-Naranjo***, 185 Wis. 2d at 185. In ***Witkowski***, 163 Wis. 2d at 990, we held that a defendant may not attempt to relitigate a matter previously decided on appeal in a subsequent postconviction proceeding. And in ***Escalona-Naranjo***, 185 Wis. 2d at 185, our supreme court held that claims that could have been raised on a prior direct appeal or postconviction motion from a criminal judgment of

[5] In a subsequent filing, Martin also asserted that, "had the other acts evidence been admitted," he would not have stipulated to having written the notes [to A.B.]" He further asserted that, without his stipulation, the notes would not have been admitted. Martin did not provide any factual support for the first assertion nor did he develop any legal argument in support of the second. The circuit court gave several reasons for rejecting Martin's late-breaking assertions about the stipulation. Among other things, the court characterized the connection that Martin was attempting to make between the other acts evidence and the stipulation as "farfetched," and it stated, "I don't think there is a connection." Additionally, the court stated, Martin's notes to A.B. would have been admitted regardless of whether Martin stipulated to their authenticity, so any argument about the stipulation would fail due to lack of prejudice. Martin does not attempt to address or counter these basic points on appeal, and we discuss the matter of the stipulation no further.

conviction cannot be the basis for a subsequent WIS. STAT. § 974.06 motion unless the court determines there was sufficient reason for failing to raise the claim in the prior proceeding.

Here, as Martin acknowledges, his latest claims are "based around the same issues as Martin's [original] postconviction motion." Accordingly, they fall under the rule articulated in ***Witkowski***.

Martin appears to assert that the argument he is now making about prejudice is "more extensive" than the argument that his appointed postconviction counsel made in the original motion, but we reject that assertion for two reasons. First, even if that were true, the latest claims would still fall under ***Witkowski***, which states that "[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." ***Witkowski***, 163 Wis. 2d at 990.

Second, to the extent that Martin's latest motion could be said to raise some other claim that was not raised in his original motion, any such claim would be barred by ***Escalona-Naranjo***, 185 Wis. 2d at 185. To be sure, Martin contends that his claims are "clearly stronger" than the claims that his appointed postconviction counsel made. *See* ***State v. Romero-Georgana***, 2014 WI 83, ¶¶36, 58, 360 Wis. 2d 522, 849 N.W.2d 668 (ineffectiveness of postconviction counsel can, in some instances, be a sufficient reason for failing to raise an available claim in a prior postconviction proceeding, but the defendant must establish that the claims are clearly stronger than the claims postconviction counsel did raise in the prior proceeding, among other things). However, Martin does not develop an argument as to how or why that would be the case, and we perceive no room for any such argument.

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

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

Samuel A. Christensen
Clerk of Court of Appeals