



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

February 10, 2026

To:

Hon. Michael K. Moran
Circuit Court Judge
Electronic Notice

Kelly Schremp
Clerk of Circuit Court
Marathon County Courthouse
Electronic Notice

Michael J. Conway
Electronic Notice

Brian D. Degorski 252017
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2024AP972

State of Wisconsin v. Brian D. Degorski (L. C. No. 2011CF451)

Before Stark, P.J., Hruz, and Gill, 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).

Brian Degorski appeals from an order issued without a hearing, that denied his postconviction motion seeking relief from a 2016 criminal judgment of conviction, following his direct appeal of that conviction. Degorski claims that the circuit court erred by failing to sua sponte strike a juror for cause and that his trial counsel provided ineffective assistance by failing to further question the juror, to move to strike the juror for cause, or to use a peremptory strike to remove the juror. Degorski further contends that the reason he did not challenge trial counsel's performance with respect to the juror in a pre-appeal, postconviction motion was due to the ineffective assistance of postconviction counsel.

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 (2023-24).¹ We affirm on the grounds that: (1) Degorski forfeited his claim regarding the circuit court's error to sua sponte strike the juror for cause by failing to include it in his postconviction motion; and (2) Degorski's claims regarding his trial counsel's performance are procedurally barred because Degorski cannot establish ineffective assistance of postconviction counsel, and therefore cannot demonstrate a sufficient reason why he did not raise the claims against trial counsel earlier.

As background, Degorski was charged with repeated sexual assault of an eight-year-old boy. During voir dire, a woman, who was later selected for the jury, disclosed that she had a paternal uncle who had been found guilty of charges stemming from a sexual relationship with a 15-year-old female basketball player on a team that he coached.² The juror did not really know her uncle's victim or the details of her uncle's case because her father and uncle had a "rocky relationship."

The juror said that she was not really "shocked" about the charges against her uncle because she had heard rumors about his conduct. She conceded that her knowledge of the rumors made her think that it was "pretty likely" that her uncle was guilty. The juror denied, however, that she generally thought that if someone had been accused of something in the past, that they would be more likely to be guilty of a current charge.

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

² The juror alternately described the charge(s) as repeated sexual assault of a minor or using a computer to facilitate a child sex crime.

The juror also acknowledged, after a voir dire discussion, that this case might bring back some memories about her uncle's case "in the back of [her] head" and that her uncle's case might "cross [her] mind" or "come into play a little bit." However, the juror repeatedly stated that she would judge this case only on the facts and evidence of this case, that she would not make comparisons between her uncle's case and this one, and that she believed she could be fair and impartial.

The circuit court stated that it would allow the juror to remain on the panel without any motion to strike her having been made. Degorski's trial counsel did not use a peremptory strike to remove the juror.

Following Degorski's conviction, his postconviction and appellate attorney filed an appeal on his behalf, challenging the admission of other-acts evidence and prior-consistent statements the victim made to a sheriff's deputy. This court affirmed the conviction. Degorski then filed a pro se postconviction motion in the circuit court pursuant to WIS. STAT. § 974.06, alleging that his trial counsel should have further questioned the juror, moved to strike her for cause, or used a peremptory strike to remove her and that his postconviction counsel should have raised a claim of ineffective assistance of counsel against his trial counsel. The circuit court denied the postconviction motion without a hearing, and that order is the subject of this appeal.

As we noted above, Degorski forfeited any claim that the circuit court should have struck the juror for cause by failing to include it in his direct appeal. This court will not consider issues raised for the first time on appeal, so that we do not "blindsides trial courts with reversals based on theories which did not originate in their forum." *Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476 (citation omitted). The only potential issues

before us, then, are the claims that Degorski's trial counsel provided ineffective assistance in various ways with respect to the juror. There is a threshold issue, however, as to whether the claims against trial counsel are procedurally barred. Whether a defendant is procedurally barred from making a claim in a postconviction motion is a question of law subject to de novo review.

State v. Romero-Georgana, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

No claim that could have been raised in a previously filed postconviction motion or direct appeal can be the basis for a subsequent Wis. STAT. § 974.06 motion unless the court finds there was sufficient reason for failing to raise the claim in the earlier proceeding. Sec. 974.06(4); *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Degorski asserts that the reason his appellate counsel could not assert a claim of ineffective assistance against Degorski's trial counsel on Degorski's direct appeal was that Degorski's postconviction counsel provided ineffective assistance by failing to preserve any such claim of ineffective assistance of trial counsel with a postconviction motion filed before the appeal. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). We disagree that postconviction counsel's failure to raise a claim of ineffective assistance of trial counsel with respect to the juror constitutes a sufficient reason to allow Degorski to raise the claim now.

A defendant asserting ineffective assistance of counsel as the sufficient reason for failing to raise a postconviction issue earlier must not only provide sufficient allegations to establish the asserted claim of ineffective assistance, see *State v. Balliette*, 2011 WI 79, ¶63, 336 Wis. 2d 358, 805 N.W.2d 334, but the defendant must also show that the nonraised issue was clearly stronger than other issues that counsel chose to pursue, *Romero-Georgana*, 360 Wis. 2d 522, ¶45. Here, we are not persuaded that the ineffective assistance of trial counsel claims that Degorski is now

seeking to raise with respect to the juror are clearly stronger than the evidentiary issues raised on Degorski's direct appeal.

As to further questioning the juror, Degorski has not identified any additional questions his trial counsel should have asked the juror, much less asserted what answers the juror would have given that would have established bias on her part. Therefore, Degorski has not alleged sufficient facts to establish prejudice on this claim.

As to exercising a peremptory strike against the juror in question, Degorski has not identified which other panel members were struck by trial counsel using peremptory strikes. Without that information, it is impossible to evaluate counsel's decision not to use a peremptory strike to remove the juror in question. Degorski has therefore also failed to allege sufficient facts to demonstrate either deficient performance or prejudice from this alleged error by counsel.

As to bringing a motion to strike for cause, Degorski contends that the juror was both subjectively and objectively biased. Subjective bias "refers to 'bias that is revealed through the words and the demeanor of the prospective juror.'" *State v. Lepsch*, 2017 WI 27, ¶23, 374 Wis. 2d 98, 892 N.W.2d 682 (citation omitted). Objective bias "relates to the question of 'whether [a] reasonable person in the individual prospective juror's position could be impartial.'" *Id.*, ¶24 (alteration in original; citation omitted).

"A prospective juror is subjectively biased if the record reflects that the juror is not a reasonable person who is sincerely willing to set aside any opinion or prior knowledge that the prospective juror might have." *State v. Oswald*, 2000 WI App 2, ¶19, 232 Wis. 2d 62, 606 N.W.2d 207 (1999). The record here shows the exact opposite, given the juror's repeated

assertions that she could be fair and judge this case on the evidence presented rather than comparing it to her uncle's case.

The record also provides scant support for Degorski's assertion that the juror was objectively biased. The juror did not really know, much less have a close connection with, the victim of her uncle's crime. Therefore, there was little danger that she would have an emotional connection to the victim in this case based upon her knowledge of her uncle's case. Moreover, the circumstances of this case, in which Degorski was charged with sexually assaulting a prepubescent boy, were significantly different from her uncle's alleged sexual relationship with a teenaged girl.

In conjunction with case law providing both that a juror is presumed to be impartial, *see Lepsch*, 374 Wis. 2d 98, ¶22, and that counsel is presumed to be effective, *see Balliette*, 336 Wis. 2d 358, ¶27, Degorski's claims that his postconviction counsel provided ineffective assistance by failing to challenge trial counsel's handling of the juror are extremely weak. We conclude that the ineffective assistance of trial counsel claims were not clearly stronger than the evidentiary claims ultimately brought on appeal, which had already been preserved and did not require a pre-appeal, postconviction motion. Therefore, postconviction counsel's failure to file a pre-appeal, postconviction motion challenging trial counsel's handling of the juror does *not* provide a sufficient reason why Degorski failed to raise his claims of ineffective assistance of trial counsel earlier. It follows that Degorski's claims of ineffective assistance of trial counsel are procedurally barred under *Escalona-Naranjo*. Because the claims are procedurally barred, the circuit court properly denied Degorski's postconviction motion without an evidentiary hearing.

Upon the foregoing,

IT IS ORDERED that the postconviction order is summarily affirmed. 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*