



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 II

February 18, 2026

To:

Hon. Jon E. Fredrickson
Circuit Court Judge
Electronic Notice

Amy Vanderhoef
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Sarah Catherine Geers
Electronic Notice

Sammy Lee, III #487670
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2024AP2336

State of Wisconsin v. Sammy Lee, III (L.C. #2016CF322)

Before Neubauer, P.J., Grogan, 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).

Sammy Lee, III, pro se, appeals from a circuit court order denying his postconviction motion. Lee argues the court erred and that this court should exercise its discretion to grant him a new trial “because the controversy was not fully tried.” 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.

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

In February 2016, the State charged Lee with armed robbery, attempted armed robbery, and attempted first-degree intentional homicide. The complaint alleged Lee robbed two individuals in their room at the Knights Inn Motel in Racine County, stabbing one multiple times. Lee also was stabbed during this encounter.

The night of the robbery, Lee called police and told them he was stabbed when someone attempted to rob him in Kenosha. Police later interviewed Lee as a potential suspect in the Knights Inn incident, and Lee alleged he was in Kenosha at that time. Police also interviewed Amber Dowden, an individual who was sharing a room with Lee at the Riverside Inn in Racine at the time of the armed robbery. Dowden stated Lee had returned to her hotel room that evening and informed her that he had been stabbed while attempting a robbery at the Knights Inn.

At trial, the State called the two victims, who were brothers, to testify. The State first called Brad,² the brother who was not stabbed. Brad testified a robber entered their hotel room, threatened that he had a gun, robbed him, and then began to struggle with Mark, the other brother. Brad later identified Lee as the robber during a photo lineup. Mark testified that when the robber broke into the room, Mark grabbed a knife and struggled with the robber. Mark stated he could not remember anything after that point until waking up later in the hospital. Mark identified someone other than Lee in the photo lineup, but stated he had been drinking before viewing the lineup.

The State also called a crime analyst at the Wisconsin Department of Justice who presented analysis of geospatial data taken from Lee's cell phone. The analyst concluded Lee's

² We refer to the victims using pseudonyms to protect their right to privacy.

phone traveled from the Riverside Inn to the area of the Knights Inn around the time of the robbery. The phone then traveled to Kenosha before returning to the area of the Riverside Inn that same evening.

After a four-day trial, the jury convicted Lee of attempted first-degree intentional homicide, armed robbery, and attempted armed robbery. The circuit court sentenced Lee to 35 years of initial confinement and 25 years of extended supervision. Lee then filed a motion to set aside the verdict and for a new trial, pursuant to WIS. STAT. §§ 805.15 and 809.30. Lee argued his trial counsel rendered ineffective assistance because he failed to make an opening statement, failed to investigate and call two witnesses, and failed to properly cross-examine the State's witnesses regarding text messages sent and received from Lee's phone about the Knights Inn robbery.

The circuit court held a ***Machner***³ hearing. Lee's trial counsel testified he recalled Lee identifying his father, Sammy Lee, Jr., as a potential trial witness but that Lee never mentioned Melissa Escamilla as a potential witness, and Escamilla never contacted counsel. Escamilla testified she reached out to counsel, but the date of contact she provided was many months prior to the date counsel began representing Lee. She claimed that, on the night of the robbery, she informed police officers that she witnessed a man who was not Lee entering the victims' room. She also testified she wrote a letter to Lee in early 2016, when he was incarcerated at the Racine County Jail, informing him about the unidentified individual she saw on the night of the robbery. However, neither Lee nor Escamilla produced any letters, and police reports contain no reference

³ *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

to a conversation with Escamilla. The court concluded trial counsel was not ineffective because the credibility issues presented by both potential witnesses constituted a reasonable strategic decision not to introduce their testimony at trial.

Lee appealed, and his counsel filed initial and supplemental no-merit reports. Lee filed responses to both. This court agreed with counsel's determination "that a challenge to the sufficiency of the evidence would lack arguable merit." *State v. Sammy Lee, III*, No. 2020AP595-CRNM, unpublished slip op. and order at 4 (WI App Apr. 12, 2023). We further concluded the circuit court's sentencing determination "had a 'rational and explainable basis[,']" and that "the sentence imposed does not 'shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" *Id.* We also agreed with Lee's counsel that there was no issue of arguable merit regarding the denial of Lee's postconviction motion. Finally, we concluded there was no arguable merit to Lee's contentions that the State committed a *Brady*⁴ violation by failing to provide the statement of Lee's alibi witness to the defense, or that the court erroneously exercised its discretion by allowing inadmissible hearsay evidence to be introduced at trial over the defense's objection. *Lee*, No. 2020AP595-CRNM at 7-8.

Lee then filed a second postconviction motion pursuant to WIS. STAT. § 974.06. Lee alleged trial counsel was ineffective when he failed to investigate and subsequently present Lee's potential alibi defense. Lee further contended postconviction counsel was ineffective in failing to adequately impeach trial counsel during the *Machner* hearing, and failing to argue that new

⁴ *Brady v. Maryland*, 373 U.S. 83 (1963).

evidence existed that proved Lee was “actually innocent.” Lee also argued the issues he identified in this second postconviction motion were “clearly stronger” than the issues postconviction counsel identified in the first motion, and that Lee’s reliance on postconviction counsel constituted a sufficient reason for Lee’s failure to raise these issues in previous filings.

The circuit court summarily dismissed Lee’s second postconviction motion as procedurally barred. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The court concluded Lee’s claims of trial counsel’s ineffectiveness were speculative, and that he failed to provide an adequate reason for not raising them in his initial postconviction motion and appeal. As to Lee’s claims regarding postconviction counsel, the court concluded Lee’s arguments were either speculative or already had been litigated following Lee’s initial postconviction motion and appeal.

Lee appeals. He asserts the circuit court erred when it denied his second postconviction motion and that, alternatively, this court should exercise its discretion to grant him a new trial on the basis that the controversy was not fully tried. Specifically, Lee argues trial counsel was ineffective in failing to adequately investigate Lee’s “entire alibi defense before deciding not to present an alibi defense at [Lee’s] trial,” that postconviction counsel was ineffective in failing to contact Lee’s original trial attorney, and an investigator hired by the attorney, for purposes of proving Lee’s trial counsel had knowledge of Escamilla as a potential alibi witness, and that postconviction counsel should have impeached trial counsel with information that allegedly supports Lee’s claim that he directed trial counsel to contact Escamilla. (Formatting altered.) Finally, Lee argues the controversy was not fully tried because “the jury did not get to hear any evidence that would corroborate his [alibi defense].”

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, a claim that could have been raised in a prior postconviction motion or on direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06, unless the defendant demonstrates a sufficient reason for failing to previously raise the claim. *Id.* A defendant may not relitigate an issue “no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Whether a defendant’s claim is procedurally barred and whether a sufficient reason exists for the failure to previously assert the claim present questions of law we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶¶9, 16, 331 Wis. 2d 640, 794 N.W.2d 920.

As we now explain, we conclude that every claim Lee now presents for appeal either has been previously litigated or could have been litigated, and is thus procedurally barred by *Escalona-Naranjo*. See *id.*, 185 Wis. 2d at 185. Lee’s assertion that trial counsel failed to “adequately investigate [his] **entire** alibi defense before deciding not to present an alibi defense at [his] trial[,]” is not sufficiently distinct from the previously litigated claim he raised in his original postconviction motion that “[t]rial counsel was deficient when he failed to investigate and call” Lee’s father and Escamilla.

To attempt to evade the procedural bar, Lee’s second postconviction motion makes substantially the same claim as his earlier motion—that trial counsel failed to adequately investigate an alibi defense—but raises new potential witnesses and evidence. However, as the circuit court correctly observed, Lee only speculates about whether these witnesses would support his alibi defense. He asserts “[t]he owner of [a taco restaurant] *may have* ... cameras showing [Lee] coming into [the restaurant] at the time that he testified he was there.” (Formatting altered.) He claims his cousin “could *potentially* provide testimony about [Lee]

being at her home ... on the day of the robbery[.]” (Formatting altered.) These assertions are speculative, and, critically, are merely attempts to relitigate his claim that trial counsel inadequately investigated potential alibi defenses. As demonstrated, Lee’s instant claim of trial counsel ineffectiveness is “only a slight variation of the one that we previously rejected on [Lee’s] first appeal[,]” and is thus procedurally barred. *See State v. Crockett*, 2001 WI App 235, ¶15, 248 Wis. 2d 120, 635 N.W.2d 673.

Similarly, Lee’s claim that his postconviction counsel was ineffective in failing to impeach trial counsel regarding the latter’s purported failure to adequately investigate an alibi defense could have been litigated in Lee’s appeal from the circuit court order denying Lee’s original postconviction motion. It is also procedurally barred. A defendant “may not raise issues in a subsequent [Wis. STAT.] § 974.06 motion that he could have raised in response to a no-merit report, absent a ‘sufficient reason[.]’” *State v. Allen*, 2010 WI 89, ¶¶3-5, 328 Wis. 2d 1, 786 N.W.2d 124. The record shows that Lee’s response to counsel’s no-merit report did not raise any issues regarding postconviction counsel’s representation. Further, Lee has not provided a sufficient reason for not previously raising them.

Finally, Lee requests we exercise our discretion under Wis. STAT. § 751.06 to “reverse judgments when the real controversy has not been fully tried.” *Vollmer v. Luety*, 156 Wis. 2d 1, 19, 456 N.W.2d 797 (1990). We exercise this discretion “only in exceptional cases” and “approach[] a request for a new trial with great caution.” *Morden v. Continental AG*, 2000 WI 51, ¶87, 235 Wis. 2d 325, 611 N.W.2d 659. Lee argues he should be granted this extraordinary relief because “the [S]tate presented a weak case” and because Escamilla was not called to provide testimony supporting Lee’s alibi defense.

As we concluded following Lee's first appeal, "the State produced ample evidence to convict Lee of his crimes." *Lee*, 2020AP595-CRNM at 3. To recap, just some of this evidence includes one of the victims identifying Lee as the robber from a photo lineup, geospatial analysis of Lee's phone indicating it was near the Knights Inn at the time of the robbery, an inmate testifying Lee confessed to robbing the victims, and Lee suffering from and seeking medical treatment for a stab wound sustained on the night of the robbery. Further, Lee's complaints regarding counsel's performance have all been determined to be without merit. There is no basis upon which to set aside Lee's conviction and grant a new trial. We affirm.

Therefore, for the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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*