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DISTRICT I

March 10, 2026

To:

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Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Robert N. Meyeroff
Electronic Notice

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

2024AP2501

State of Wisconsin v. Davon M. Thompson (L.C. # 2014CF260)

Before White, C.J., Donald, and Geenen, 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).

Davon M. Thompson appeals the order denying his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2023-24),¹ and the order denying his motion for reconsideration. 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 summarily affirm.

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

In 2014, Thompson entered a guilty plea to one count of first-degree reckless homicide, as a party to a crime. One count of felon in possession of a firearm was dismissed and read-in. Thompson was sentenced to forty-five years in prison.

Thompson pursued a direct appeal. Thompson's appellate counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2015-16), and Thompson filed a response. After a review of the submissions and the record, this court affirmed Thompson's judgment of conviction and relieved his appellate counsel of further representation. *See State v. Thompson*, No. 2015AP2526-CRNM, unpublished op. and order (WI App June 13, 2018). The court found that there was "no arguable basis for reversing the judgment of conviction."

Subsequently, Thompson retained counsel and filed a postconviction motion pursuant to WIS. STAT. § 974.06 seeking to withdraw his plea on two grounds. First, Thompson argued that the trial court erred in not allowing his trial attorney to withdraw prior to the entry of his plea. Second, Thompson argued that trial counsel was ineffective in advising Thompson to enter a plea to first-degree reckless homicide. Thompson further asserted that his appellate counsel was ineffective for failing to "raise the issues in this motion" and the issues "are clearly stronger than the issues mentioned by appellate counsel." Thompson did not provide any additional argument pertaining to appellate counsel's ineffectiveness.

The circuit court denied Thompson's motion without a hearing. The court found that Thompson's motion was procedurally barred because it did not "set forth any reason (let alone a sufficient one)" for not raising the current claims in response to the no-merit report. Additionally, the court observed that:

[C]ounsel alleges that the current issues “are clearly stronger than the issues mentioned by appellate counsel [in the no merit report],” which is not the correct standard. However, even if this were the correct standard, the defendant would still not be entitled to a hearing or other relief because his claims of ineffective assistance of counsel rely primarily on conclusory allegations, and he has presented no meaningful comparative analysis between his current claims and the claims that were discussed in the no merit report.

Thompson filed a motion for reconsideration, arguing that “an issue that is not frivolous cannot be procedurally barred.” The circuit court denied the motion for reconsideration. The circuit court stated that Thompson was not entitled to reconsideration because he did not “demonstrate that there was a disregard, misapplication or failure to recognize controlling precedent, nor has he produced any new evidence which could not have been included with his original motion.” See *Koepsell’s Olde Popcorn Wagons, Inc. v. Koepsell’s Festival Popcorn Wagons, Ltd.*, 2004 WI App 129, ¶44, 275 Wis. 2d 397, 685 N.W.2d 853 (stating that “[t]o prevail on a motion for reconsideration, the movant must present either newly discovered evidence or establish a manifest error of law or fact”). The court further stated that “[w]hile a reconsideration motion is not an opportunity to clean up pleading deficiencies in a prior motion, it’s worth noting that the defendant still has not acknowledged or properly applied the correct legal standard.” This appeal follows.

“It is well-settled that a defendant must raise all grounds for relief in his or her original, supplemental or amended motion for postconviction relief.” *State v. Fortier*, 2006 WI App 11, ¶16, 289 Wis. 2d 179, 709 N.W.2d 893; WIS. STAT. § 974.06. When a defendant seeks relief following a prior postconviction motion or appeal, including a no-merit appeal, the defendant must establish a “sufficient reason” for failing to raise any issues that could have been raised in the earlier proceedings. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994); *State v. Allen*, 2010 WI 89, ¶4, 328 Wis. 2d 1, 786 N.W.2d 124. The proffer must be

more than a conclusory assertion and must include allegations of “sufficient material facts,” that is, “who, what, where, when, why, and how,” demonstrating the sufficiency of his identified reason. *State v. Romero-Georgana*, 2014 WI 83, ¶¶36-37, 360 Wis. 2d 522, 849 N.W.2d 668 (citation omitted).

Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law subject to de novo review. *State v. Kletzien*, 2011 WI App 22, ¶16, 331 Wis. 2d 640, 794 N.W.2d 920. Similarly, whether a § 974.06 motion alleges sufficient facts to require a hearing is a question of law reviewed de novo. *State v. Balliette*, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. If the motion raises sufficient facts that, if true, show that the defendant is entitled to relief, the circuit court must hold an evidentiary hearing. *Id.* However, if the motion does not raise sufficient facts, presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the grant or denial of the motion is a matter of discretion entrusted to the circuit court. *Id.*

Here, as the circuit court found, Thompson’s motion is procedurally barred. While ineffective assistance of counsel may sometimes constitute a sufficient reason for failing to bring claims earlier, *see Romero-Georgana*, 360 Wis. 2d 522, ¶36, Thompson’s allegations were insufficient. As the circuit court observed, Thompson’s ineffective assistance of appellate counsel claim relies “primarily on conclusory allegations, and he has presented no meaningful comparative analysis between his current claims and the claims that were discussed in the no merit report.”

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. This basic principle is undermined if this court allows conclusory allegations that counsel was ineffective to constitute a sufficient reason for failing to raise an issue in a response to a no-merit report. *Allen*, 328 Wis. 2d 1, ¶90. Accordingly, we conclude that the circuit court properly denied Thompson’s motion without a hearing.

Therefore,

IT IS ORDERED that the orders are 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