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**DISTRICT I**

March 18, 2026

To:

Hon. Katie B. Kegel  
Circuit Court Judge  
Electronic Notice

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

John D. Carter 354431  
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You are hereby notified that the Court has entered the following opinion and order:

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2025AP343	State of Wisconsin v. John D. Carter (L.C. # 2014CF4880)
2025AP345	State of Wisconsin v. John D. Carter (L.C. # 2014CF5138)

Before White, C.J., Colón, P.J., and Geenen, J.

**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 D. Carter, pro se, appeals a circuit court order that denied his motion for postconviction discovery. The circuit court concluded that the motion was procedurally barred by WIS. STAT. § 974.06 (2023-24).<sup>1</sup> Based upon a review of the briefs and records, we conclude at conference that these consolidated matters are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

In April 2015, Carter pled guilty to conspiracy to commit possession with intent to deliver more than 50 grams of heroin; possession with intent to deliver more than 50 grams of heroin; and possession with intent to deliver more than 40 grams of cocaine. The circuit court imposed an aggregate 60-year term of imprisonment. Carter pursued a postconviction motion for plea withdrawal, raising claims that the State breached the plea agreement and that his trial counsel was ineffective in multiple ways. The circuit court denied the motion, and he appealed. We affirmed. *State v. Carter (Carter I)*, Nos. 2019AP598-CR and 2019AP599-CR, unpublished slip op. (WI App June 2, 2020).

In 2024, Carter filed the postconviction motion underlying this appeal, requesting discovery of three items: (1) a wiretap recording; (2) a warrant to track a certain telephone number; and (3) “the electronic surveillance used to routine or place [sic] Carter to [a North 24th Street address] in the City of Milwaukee.” The circuit court concluded that the motion was barred because Carter failed to offer a sufficient reason for failing to raise the claim for discovery in his original postconviction litigation. Carter appeals.

A convicted person may obtain postconviction discovery upon a showing that “the sought-after evidence is relevant to an issue of consequence.” *State v. O’Brien*, 223 Wis. 2d 303, 321, 588 N.W.2d 8 (1999). However, “the mere possibility that an item of undisclosed information might have helped the defense does not establish a consequential fact in the constitutional sense.” *Id.* (citation modified). The convicted person must establish that the evidence is “critical, relevant, and material.” *Id.* at 320 (citation omitted).

Carter has previously pursued postconviction relief, and therefore he must also clear a procedural bar before he may litigate a motion for postconviction discovery. *See State v.*

*Kletzien*, 2011 WI App 22, ¶¶11-12, 331 Wis. 2d 640, 794 N.W.2d 920. Specifically, Wis. STAT. § 974.06(4) requires that a person who wishes to pursue a second or subsequent postconviction motion demonstrate a sufficient reason for failing to raise or adequately address his or her claims in the first postconviction proceeding. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 184, 517 N.W.2d 157 (1994). Whether a defendant’s claims are procedurally barred by *Escalona-Naranjo* presents a question of law that this court reviews de novo. *Kletzien*, 331 Wis. 2d 640, ¶9.

Here, Carter indicated in his postconviction motion that he had a sufficient reason to pursue postconviction discovery: his postconviction counsel was ineffective “for not raising th[is] issue on direct appeal.... [T]hese documents may support[] Carter’s potential claim that counsel provided him ineffective assistance of counsel by failing to file a motion to suppress based upon 4th [A]mendment grounds.”

Ineffective assistance of postconviction counsel for failing to raise issues in an original postconviction motion may in some circumstances constitute a sufficient reason for an additional postconviction motion. *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. A bare allegation of ineffective assistance of postconviction counsel, however, will not suffice. Rather, a convicted person must “make the case” of counsel’s alleged ineffective assistance. *State v. Balliette*, 2011 WI 79, ¶67, 336 Wis. 2d 358, 805 N.W.2d 334. Further, the person must demonstrate counsel’s ineffective assistance within the four corners of the postconviction motion, not in a subsequent appellate brief. *State v. Allen*, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433.

To “make the case” for ineffective assistance, a convicted person must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *Balliette*, 336 Wis. 2d 358, ¶¶28, 67. The test requires that the convicted person show both a deficiency in counsel’s performance and prejudice as a result. *Strickland*, 466 U.S. at 687. To prove deficiency, the person must show that counsel’s actions or omissions “fell below an objective standard of reasonableness.” *Id.* at 688. To prove prejudice, the person “must show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. We may consider either prong of the analysis first, and if the convicted person fails to make an adequate showing as to one prong, we need not address the other. *Id.* at 697.

We begin by considering the deficiency prong. When, as here, a person claims that postconviction counsel was ineffective for failing to raise issues, proof of the deficiency prong requires the person to allege and show that the neglected issues were “clearly stronger” than the claims that postconviction counsel pursued. *See Romero-Georgana*, 360 Wis. 2d 522, ¶4. The required showing entails “compar[ing] the arguments now proposed against the arguments previously made,” and the burden is on the convicted person to demonstrate that he or she has satisfied the standard. *Id.*, ¶¶46, 58. Case law provides a well-settled methodology for the convicted person to apply, requiring the person to allege and discuss “sufficient material facts—*e.g.*, who, what, where, when, why, and how—that, if true, would entitle him to the relief he seeks.” *Id.*, ¶58 (citation omitted).

In this case, Carter’s postconviction discovery motion neither acknowledged nor applied the “clearly stronger” standard. He merely asserted that postconviction counsel should have pursued discovery of the three items that Carter seeks. Carter did not examine his claim for

postconviction discovery in relation to the numerous claims that postconviction counsel raised originally, or compare the particulars of his previously raised claims to the new claim for postconviction discovery. Indeed, Carter’s motion for postconviction discovery did not mention the litigation underlying *Carter I* or identify the issues that he raised in that proceeding. Carter therefore failed to satisfy *Strickland*’s deficiency prong.

In light of the foregoing, we need not address *Strickland*’s prejudice prong. *See id.*, 466 U.S. at 697. For the sake of completeness, however, we observe that Carter’s postconviction motion alleged that the three items at issue “may support[]” a “potential claim” of ineffective assistance of trial counsel. This allegation failed to demonstrate that the outcome of the proceedings underlying *Carter I* would probably have been different if postconviction counsel had pursued the items. The allegation instead demonstrated that Carter was engaged in a fishing expedition in the hope of finding materials that might benefit him. Conclusory allegations that additional postconviction steps might have led to a colorable postconviction claim are insufficient to make the case that postconviction counsel was ineffective. *See Balliette*, 336 Wis. 2d 358, ¶¶62-63.

Carter thus failed to show a sufficient reason to permit serial litigation here. Accordingly, we affirm the circuit court’s conclusion that his claims are procedurally barred. Successive claims “run counter to the design and purpose” of WIS. STAT. § 974.06, which is to promote “finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185.

Therefore,

IT IS ORDERED that the postconviction order is 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*