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DISTRICT I

August 25, 2026

To:

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

2025AP486

State of Wisconsin v. Willie James Terry (L.C. # 2005CF2074)

Before Donald, 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).

Willie James Terry, pro se, appeals from an order denying his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2023-24).¹ 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. Although different biennial versions of the statutes were in effect during some proceedings in this matter, the language of the statutes cited in this opinion was substantially the same as the current version.

In June 2006, a jury found Terry guilty of two counts of kidnapping while armed, two counts of armed robbery with the use of the force, and one count of first-degree sexual assault using a dangerous weapon, relating to an incident involving two young female victims. The circuit court imposed a forty-year sentence, bifurcated as thirty-two years of initial confinement followed by eight years of extended supervision.

Terry pursued a direct appeal under WIS. STAT. RULE 809.32. See *State v. Terry*, No. 2007AP1356-CRNM, unpublished op. and order (WI App May 12, 2008) (*Terry I*). The no-merit report submitted by Terry’s appellate counsel specifically discussed the following issues:

(1) whether the trial court erred when it permitted one of the victims, [T.B.], to testify, on rebuttal, to when she got a tattoo on her neck; (2) whether Terry was denied due process when the trial court refused to permit evidence about alleged contact between [T.B.] and her sister during trial and prior to [T.B.]’s rebuttal testimony; (3) whether the trial court erred by not permitting Terry to present testimony from a witness not disclosed on Terry’s witness list while the State was permitted to call a previously-not-disclosed witness on rebuttal; (4) whether sufficient evidence supports the jury’s verdict; and (5) whether the court properly exercised its sentencing discretion.

Id. at 2. Terry filed a response to the no-merit report, which we observed “simply reiterates the issues discussed by counsel ... and states Terry’s belief that the issues have merit.” *Id.* at 2 n.2. We further noted that the response “contains no argument.” *Id.*

After reviewing those issues, as well as conducting an independent review of the record as mandated in WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967), this court concluded there was “no basis for reversing the judgment of conviction,” and that “[a]ny further proceedings would be without arguable merit[.]” *Terry I*, No. 2007AP1356-CRNM at 8. We therefore affirmed Terry’s judgment of conviction. *Id.* at 9.

In 2014, Terry filed a petition for writ of habeas corpus with this court, pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). In that petition, he alleged that his appellate counsel was ineffective for “fil[ing] a no[-]merit report instead of investigating and pursuing” issues relating to the alleged ineffectiveness of trial counsel. See *State ex rel. Terry v. Pollard*, No. 2014AP2190-W, unpublished op. and order at 1 (WI App July 22, 2015) (*Terry II*). Specifically, Terry asserted that his trial counsel was ineffective for failing to consult with Terry prior to his testimony at trial, which resulted in “highly prejudicial answers[.]” *Id.* at 4. Terry also claimed trial counsel was ineffective for failing to investigate and present a video tape from a gas station where the victims claim to have been with Terry just prior to the incident. *Id.* In his petition, Terry stated that he obtained the video tape in 2010, and that it does not show that either he or the victims were at the gas station.

We denied Terry’s petition on the grounds that a *Knight* petition was not the proper vehicle for his claims. *Id.* at 4-5. We stated that claims of ineffective assistance of trial counsel must first be raised in the circuit court. *Id.* at 4. We also rejected Terry’s claim that the no-merit decision was incorrectly decided, for the same reason. We observed that there was nothing in the record for the no-merit appeal regarding the “[i]ssues concerning the videotape—which was apparently not played at trial—and trial counsel’s strategic decisions concerning his advice to Terry” because they had never been raised in the circuit court, and therefore were all unpreserved. *Id.* at 5; see also *State ex rel. Panama v. Hepp*, 2008 WI App 146, ¶20, 314 Wis. 2d 112, 758 N.W.2d 806 (a *Knight* petition is “available to raise ineffective assistance claims alleging that counsel failed to raise a *preserved* issue in a no-merit appeal” (emphasis added)). As a result, we were “not persuaded that the no-merit decision was wrongly decided.” *Terry II*, No. 2014AP2190-W at 5.

In January 2025, Terry filed the WIS. STAT. § 974.06 motion underlying this appeal, raising the same issues as in his writ petition. The circuit court found that Terry’s claims were procedurally barred as he had not provided a sufficient reason for failing to previously raise them. Furthermore, the court found that even if there was arguably a sufficient reason for the delay regarding the video tape, since Terry had not obtained it until after the no-merit appeal was concluded, Terry’s allegations were conclusory and insufficiently pled. The court therefore denied the motion. This appeal follows.

In a motion brought under WIS. STAT. § 974.06, a defendant must demonstrate that there is a “sufficient reason” that the claims in that motion were not raised in a prior motion or direct appeal, or they are procedurally barred. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). A prior no-merit appeal may also “trigger the procedural bar of *Escalona-Naranjo* and WIS. STAT. § 974.06(4)[.]” *State v. Tillman*, 2005 WI App 71, ¶21, 281 Wis. 2d 157, 696 N.W.2d 574. In order to overcome the procedural bar, a defendant must demonstrate a sufficient reason for any issues of arguable merit not being addressed in a no-merit appeal. *State v. Aaron Allen*, 2010 WI 89, ¶¶5, 41, 328 Wis. 2d 1, 786 N.W.2d 124.

To that end, the procedural bar relating to no-merit appeals may be imposed as long as the no-merit decision “carries a sufficient degree of confidence” warranting its application. *Tillman*, 281 Wis. 2d 157, ¶20. However, the existence of an issue of arguable merit that was not identified in the no-merit procedures under WIS. STAT. RULE 809.32 and *Anders* may be a sufficient reason for the issue not being previously raised. *State v. Fortier*, 2006 WI App 11, ¶27, 289 Wis. 2d 179, 709 N.W.2d 893. Whether to apply the procedural bar is a question of law that we review de novo. *Tillman*, 281 Wis. 2d 157, ¶14.

In his WIS. STAT. § 974.06 motion, Terry asserts that his appellate counsel and this court failed to identify meritorious issues in his no-merit appeal; that is, the ineffective assistance of trial counsel claims raised in his motion. However, as noted, these claims relate to “unpreserved issues that were not addressed in the appellate record.” **Terry II**, No. 2014AP2190-W at 5. As a result, they were not part of our review pursuant to WIS. STAT. RULE 809.32 and **Anders**. Therefore, Terry has not demonstrated that a preserved, arguably meritorious issue was missed in his no-merit appeal. See **Panama**, 314 Wis. 2d 112, ¶20. As such, he has failed to establish a sufficient reason based on any error in the no-merit process. See **Fortier**, 289 Wis. 2d 179, ¶27.

Furthermore, Terry does not explain the extensive delay in bringing these claims. Terry filed the underlying WIS. STAT. § 974.06 motion approximately ten years after this court denied his petition for writ of habeas corpus alleging the same claims; fifteen years after his alleged discovery of the existence of the gas station video tape; and seventeen years after the conclusion of his no-merit appeal. As our supreme court has observed, the timing of a WIS. STAT. § 974.06 motion can be an important consideration relating to the procedural bar because delays can “wreak havoc.” See **Aaron Allen**, 328 Wis. 2d 1, ¶73 (suggesting delays of just three and a half years, or seven years, were disqualifying for purposes of establishing a sufficient reason relating to the existence of an arguably meritorious issue in a no-merit appeal).

Terry’s only attempt at addressing these extensive delays is found in his claim regarding the gas station video tape. He asserts that he “did not become aware that the tape was preserved in police evidence until the year 2010,” after his no-merit appeal was concluded. Even if this alleged lack of knowledge constitutes a sufficient reason for not bringing this claim earlier, the circuit court found the motion was not sufficiently pled. To be sufficiently pled, a claim brought in a WIS. STAT. § 974.06 motion must allege “sufficient material facts that, if true, would entitle

the defendant to relief.” *State v. John Allen*, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. In other words, the motion “must include facts that allow the reviewing court to meaningfully assess the defendant’s claim.” *Id.*, ¶21 (citation modified).

The circuit court found that Terry’s motion did not contain sufficient facts to allow it to meaningfully assess his claim. “Most critically,” the court observed, was that Terry had not “meaningfully engaged with the evidence against him” to demonstrate that using the video for purposes of impeaching “a detail of the victim’s narrative that preceded the offenses” would have been “reasonably probable to alter the outcome of his trial.”

In other words, the circuit court determined that Terry’s claim did not meet the test for demonstrating ineffective assistance of counsel set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). The *Strickland* test requires a defendant to show both that trial counsel’s performance was deficient and that the deficiency prejudiced the defense. *Id.* at 687. Proving prejudice involves showing “that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694.

Terry contends that the video tape would have “severely hurt” the victims’ credibility. However, he does not address or discuss any other evidence presented at his trial to demonstrate that there was a reasonable probability that the video tape would have overcome that evidence to allow for a different outcome. See *id.* Therefore, even if there is a sufficient reason for Terry’s failure to previously raise the claim regarding the video tape, it was insufficiently pled to show a reasonable probability of a different outcome. See *John Allen*, 274 Wis. 2d 568, ¶21. As such, the circuit court did not err in rejecting that claim. See *id.*, ¶9 (it is within the discretion of the

circuit court to deny a postconviction motion without a hearing if it “does not raise facts sufficient to entitle the movant to relief”).

In that vein, we further observe that the sufficiency of the evidence presented at Terry’s trial was reviewed in his no-merit appeal. In that decision, we stated that the State presented additional witnesses who “corroborated certain portions of [the victims’] testimony.” **Terry I**, No. 2007AP1356-CRNM at 7. We noted that it is for the jury to assess witness credibility, and this court will generally not disturb those determinations. *Id.* at 6; **State v. Poellinger**, 153 Wis. 2d 493, 503, 451 N.W.2d 752 (1990). Ultimately, we concluded that “[t]he State’s evidence supports a finding of guilt on each crime charged.” **Terry I**, No. 2007AP1356-CRNM at 7. As a result, because the sufficiency of the evidence was fully reviewed in Terry’s no-merit decision, the procedural bar could be imposed for that reason to his video tape claim. See **Aaron Allen**, 328 Wis. 2d 1, ¶¶58-62.

In any event, we are not persuaded that Terry has demonstrated a sufficient reason for now bringing either of his ineffective assistance claims. He has not identified any errors in our no-merit review, nor has he explained the extensive delay in bringing his WIS. STAT. § 974.06 motion. See **Fortier**, 289 Wis. 2d 179, ¶27; **Aaron Allen**, 328 Wis. 2d 1, ¶¶41, 73. The claims are therefore procedurally barred. See **Tillman**, 281 Wis. 2d 157, ¶20. Accordingly, we affirm the circuit court’s order denying his WIS. STAT. § 974.06 postconviction motion.²

Therefore,

² To that end, the State requested that we certify this case to our supreme court to consider whether the defense of laches applies to postconviction motions filed under WIS. STAT. § 974.06. As we are affirming the circuit court’s decision on other grounds, we decline to do so.

IT IS ORDERED that the order is 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