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DISTRICT I

September 15, 2026

To:

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Circuit Court Judge
Electronic Notice

Kathleen E. Wood
Electronic Notice

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Clerk of Circuit Court
Milwaukee County Safety Building
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1308

State of Wisconsin v. Michael J. Moore (L.C. # 2000CF930)

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).

Michael J. Moore, pro se, appeals from an order of the circuit court that denied his WIS. STAT. § 974.06 (2023-24)¹ motion without a hearing. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21. The order is summarily affirmed.

Moore and three others engaged in a series of armed robberies. During one of the robberies, a sixteen-year-old girl was killed. Moore was charged with one count of felony

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

murder, one count of attempted armed robbery as a party to a crime, and six counts of armed robbery as a party to a crime. Moore pled no contest to the felony murder charge and guilty to the remaining offenses. Prior to sentencing, Moore moved to withdraw his pleas, arguing that the State had changed its offer at the last minute and he did not have sufficient time to consider the change or discuss it with counsel. At the start of the sentencing hearing, however, Moore withdrew the motion. The circuit court imposed eight consecutive sentences totaling 304 years' imprisonment.²

Moore appealed. His attorney filed a no-merit report, to which Moore filed a short response. We reviewed the record and affirmed. See ***State v. Moore***, No. 2001AP3440-CRNM, unpublished op. and order (WI App Apr. 1, 2002). In 2021, Moore petitioned this court for a writ of habeas corpus, claiming appellate counsel should have raised four issues. We denied the petition, explaining that under ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 679-80, 556 N.W.2d 136 (Ct. App. 1996), the circuit court was the proper forum for Moore's complaints because postconviction counsel had to preserve the issues for review by postconviction motion before appellate counsel could have raised them. See ***State ex rel. Moore v. Cromwell***, 2021AP1964-W, unpublished op. and order (WI App Nov. 3, 2022).

In May 2024, Moore filed the underlying WIS. STAT. § 974.06 motion. He alleged that (1) the circuit court failed to follow the requirements of WIS. STAT. § 971.08 by failing to inform him of all the elements of the felony murder charge; (2) the State erred in charging him with

² The first seven offenses in the criminal complaint were pre-Truth In Sentencing (TIS); the sentences for those cases totaled 244 years' imprisonment. The final armed robbery was committed in February 2000 and subject to TIS-I penalties. On that count, Moore was sentenced to 40 years' initial confinement and 20 years' extended supervision.

“armed robbery/felony murder” because nothing was stolen from that location; (3) the State breached the plea agreement; (4) postconviction counsel was ineffective for not raising claims of ineffective trial counsel relating to the plea; and (5) postconviction counsel was ineffective for not sending Moore a copy of the transcripts and the court record for Moore to use in responding to the no-merit report. The circuit court denied the motion without a hearing, concluding that Moore’s claims “have no merit, are procedurally barred, and fail to present a sufficient reason to overcome the procedural bar.” Moore appeals.

“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; *see also* WIS. STAT. § 974.06; *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). “[T]he phrase ‘original, supplemental or amended motion’” encompasses both direct appeals and no-merit appeals. *See State v. Lo*, 2003 WI 107, ¶42, 264 Wis. 2d 1, 665 N.W.2d 756 (citation omitted); *State v. Tillman*, 2005 WI App 71, ¶27, 281 Wis. 2d 157, 696 N.W.2d 574. A defendant “may not raise issues in a subsequent [WIS. STAT.] § 974.06 motion that he [or she] could have raised in response to a no-merit report, absent a ‘sufficient reason’ for failing to raise the issues earlier in the no-merit appeal.” *State v. Allen*, 2010 WI 89, ¶4, 328 Wis. 2d 1, 786 N.W.2d 124.

The defendant may have a sufficient reason for not raising issues earlier if he or she can show that appellate counsel and the court of appeals did not follow the no-merit process, a process that involves this court’s “full examination of all the proceedings to search for any legal points arguable on their merits.” *Id.*, ¶¶58, 64 (citation modified). However, such demonstration requires the defendant to do more than simply “identify an issue of arguable merit that the court of appeals did not discuss.” *Id.*, ¶83. Instead, “the defendant must do something to undermine

our confidence in the court’s decision, perhaps by identifying an issue of such obvious merit that it was an error by the court not to discuss it.” *Id.* Further, “when a defendant’s postconviction issues have been addressed by the no merit procedure ... the defendant may not thereafter again raise those issues[.]” *Tillman*, 281 Wis. 2d 157, ¶19; *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

To move beyond the initial prerequisites of WIS. STAT. § 974.06(4) and *Escalona* and to adequately raise a claim for relief, a defendant must allege sufficient material facts that, if true, would entitle the defendant to relief. *State v. Romero-Georgana*, 2014 WI 83, ¶37, 360 Wis. 2d 522, 849 N.W.2d 668. “We will not read into the § 974.06 motion allegations that are not within the four corners of the motion.” *Id.*, 360 Wis. 2d 522, ¶64.

As a “sufficient reason” for not raising his five current issues in his no-merit response, Moore argues that postconviction counsel failed to provide him with copies of the transcripts and record. See WIS. STAT. RULE 809.32(1)(d) (“The attorney shall ... serve upon the person a copy of the transcript and circuit court case record within 5 days after receipt of a request for the transcript and circuit court case record from the person[.]”). This argument, however, is undeveloped, as Moore does not explain why it was necessary for him to have the transcripts in order to raise the issues. We need not consider unexplained or undeveloped arguments. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). We are therefore unpersuaded that Moore has sufficient reason for not raising these issues earlier, so they are procedurally barred.

In any event, the record reflects that Moore is not entitled to relief. Moore’s first assertion in his WIS. STAT. § 974.06 motion is that the circuit court and trial counsel violated

WIS. STAT. § 971.08 when they failed to inform him “of essential and critical elements of his offense.” Specifically, he complains no one informed him of the “asportation” element of armed robbery. See WIS. STAT. § 943.32(1) (requiring “taking or carrying away” of property). Moore says that the State charged him with “armed robbery/felony murder,” but when the gun accidentally discharged, he fled without taking any property. Thus, had trial counsel or the circuit court informed him of the “asportation” element of armed robbery, he would not have pled to felony murder and would have gone to trial.

We reviewed the adequacy of the plea colloquy in the no-merit appeal and concluded it was sufficient. Moore cannot relitigate it now. See *Tillman*, 281 Wis.2d 157, ¶19. We recognize that the complaint appears to incorrectly allege that the felony murder had occurred during an armed robbery; however, the penalty section of the complaint reflects a potential maximum for the felony murder charge that was correctly calculated based on attempted armed robbery rather than completed armed robbery. Moreover, felony murder is committed by a person who “causes the death of another human being while committing *or attempting to commit*” a specified crime, including armed robbery. See WIS. STAT. § 940.03 (emphasis added). Accordingly, failure to address the asportation element during the plea colloquy was, at worst, harmless error.³

Moore next argues that the State “violat[ed] the plea agreement that count 8 would be dismissed.” As best we can discern, Moore accepted an offer from the assistant district attorney

³ We further note that in addition to the felony murder charge, Moore was charged with one count of attempted armed robbery and six counts of completed armed robbery, and he told the court during the plea colloquy that he had reviewed the elements of those offenses with counsel. Accordingly, whether the predicate for the felony murder charge was armed robbery or attempted armed robbery, Moore was informed of the necessary elements.

that dismissed count 8, and trial counsel reviewed the plea materials with Moore a few days before the plea hearing. After Moore and counsel reviewed the plea documents but prior to the hearing date, the District Attorney instructed staff that there would be no deals for Moore or his co-defendants. Thus, the plea agreement eventually memorialized on the record was one that had Moore pleading to all eight charges. That is, the State did not breach the plea agreement, Moore accepted different conditions. Indeed, Moore moved to withdraw his pleas prior to sentencing, claiming he had not had enough time to consider the State's change of position. Ultimately, however, Moore withdrew the motion to withdraw his pleas and accepted the change of terms.

Finally, in order for Moore to prevail on an ineffective assistance claim against postconviction counsel, where such argument is based on postconviction counsel's failure to challenge trial counsel's performance, he must be able to show that trial counsel was ineffective. See *State v. Ziebart*, 2003 WI App 258, ¶15, 268 Wis. 2d 468, 673 N.W.2d 369. However, there is neither deficient performance nor prejudice when counsel fails to raise a losing or meritless argument. See *id.*

Therefore,

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