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**DISTRICT IV**

March 16, 2015

*To:*

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

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2014AP247

State of Wisconsin v. Michael Solomon (L.C. # 1993CF2106)

Before Lundsten, Sherman and Kloppenburg, JJ.

Michael Solomon, pro se, appeals a circuit court order that denied Solomon's motion for postconviction relief under WIS. STAT. § 974.06 (2013-14),<sup>1</sup> and an order denying 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.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In June 1994, Solomon was convicted of multiple counts of first-degree sexual assault, following his no-contest pleas to the charges. He was sentenced to eighty years of imprisonment followed by thirty years of probation. The State Public Defender appointed counsel to represent Solomon for postconviction proceedings, and counsel filed a postconviction motion on Solomon's behalf. Solomon voluntarily withdrew the postconviction motion filed by counsel, and instead pursued a pro se motion for sentence modification. The circuit court denied the motion in January 1997.<sup>2</sup>

Between January 1999 and June 2005, Solomon pursued three successive postconviction motions under WIS. STAT. § 974.06.<sup>3</sup> Each postconviction motion was denied by the circuit court, and we affirmed the circuit court's decisions on appeal.

Solomon filed a fourth WIS. STAT. § 974.06 motion in November 2013.<sup>4</sup> Solomon argued that: (1) his plea was not knowing, intelligent and voluntary because he did not understand that he would be ineligible for parole based on his conviction for first-degree sexual assault;<sup>5</sup> and (2)

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<sup>2</sup> In August 1998, Solomon sought to reinstate his direct appeal rights under *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). We denied the petition in September 1998.

<sup>3</sup> Solomon has pursued other proceedings challenging his conviction, but we need not list those filings here.

<sup>4</sup> Solomon titled the motion "Motion to Withdraw No-Contest Plea To Correct A Manifest Injustice." We agree with the State that Solomon's attack on his conviction based on claims of constitutional violations following expiration of Solomon's direct appeal rights is properly analyzed under WIS. STAT. § 974.06.

<sup>5</sup> To the extent Solomon frames this issue as a claim that the circuit court failed to conduct a proper plea colloquy, we note that such a claim cannot be maintained in the context of a postconviction motion filed under WIS. STAT. § 974.06. See *State v. Carter*, 131 Wis. 2d 69, 81-82, 389 N.W.2d 1 (1986). Motions filed under § 974.06 are limited to issues of constitutional or jurisdictional dimension. *State v. Balliette*, 2011 WI 79, ¶34 n.4, 336 Wis. 2d 358, 805 N.W.2d 334. A claim that the circuit court failed to follow the procedures of WIS. STAT. § 971.08 or other court-mandated duties is not an allegation of a constitutional violation. See *Carter*, 131 Wis. 2d at 82-83.

his trial counsel was ineffective during plea negotiations by wrongly advising him as to his parole eligibility, providing inaccurate information as to the victim's identification of Solomon, and allowing Solomon to be placed in a suggestive police line-up. The circuit court denied the motion, finding that Solomon's arguments were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

When a defendant's claim for relief could have been, but was not, raised in a prior postconviction motion or on direct appeal, the claim is procedurally barred unless the defendant shows a sufficient reason for failing to previously raise it. *Id.* In Solomon's fourth postconviction motion, he did not argue that he had a sufficient reason for failing to raise his arguments earlier. Instead, he contended that the procedural bar did not apply because he was invoking the court's inherent authority to allow plea withdrawal under *Pulaski v. State*, 23 Wis. 2d 138, 126 N.W.2d 625 (1964). Solomon continues this argument on appeal.

We are not persuaded that the procedural bar does not apply to Solomon's present arguments. In *State v. Henley*, 2010 WI 97, ¶75, 328 Wis. 2d 544, 787 N.W.2d 350, the supreme court explained that, "while circuit courts do have inherent powers, we do not recognize a broad, inherent power to order a new trial in the interest of justice at any time, unbound by concerns for finality and proper procedural mechanisms." Thus, defendants must pursue postconviction relief using the appropriate procedural mechanisms available. Here, the proper mechanism to seek plea withdrawal would be a claim of constitutional error under WIS. STAT.

§ 974.06. Because Solomon has not set forth a sufficient reason for failing to previously raise his current claims, his arguments are procedurally barred.<sup>6</sup>

Therefore,

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*

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<sup>6</sup> It is unclear from Solomon's current postconviction motion exactly when he is claiming he learned the facts underlying the motion. In his motion for reconsideration, Solomon asserted generally that he first discovered all of the information in 2011, when Solomon received a copy of his file from the State Public Defender and had an administrative hearing in the prison. However, Solomon does not explain in his motions to the circuit court or his brief in this court why he did not obtain that information—which has existed since his conviction—prior to his current motion.