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**DISTRICT I**

May 16, 2023

To:

Hon. Jeffrey A. Wagner  
Circuit Court Judge  
Electronic Notice

Lisa E.F. Kumfer  
Electronic Notice

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

Asmar M. Young 576164  
Supervised Living Facility  
P.O. Box 10  
Winnebago WI, 54985

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

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2021AP39

State of Wisconsin v. Asmar M. Young (L.C. #2015CF3225)

Before Brash, C.J., Dugan and White, 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).**

Asmar M. Young, *pro se*, appeals from an order of the circuit court that denied his WIS. STAT. § 974.06 motion without a hearing. 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 (2021-22).<sup>1</sup> The order is summarily affirmed.

Based upon guilty and no contest pleas entered in February 2016, Young was convicted of first-degree reckless homicide, armed robbery, first-degree recklessly endangering safety, and

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

possession of a firearm by a felon. Prior to sentencing, Young attempted to withdraw his pleas, claiming trial counsel had pressured him. The motion was denied after a hearing. After a competency exam that determined Young was competent to proceed and that he was malingering, the matter proceed to sentencing. In September 2016, the circuit court imposed consecutive sentences totaling seventy years' imprisonment.

Young's postconviction counsel also requested a competency evaluation. In February 2018, the examiner concluded there was "not support for a conclusion that Mr. Young is incompetent" for purposes of seeking postconviction or appellate relief, and Young was again found competent to proceed. In April 2018, Young filed a postconviction motion to withdraw his pleas. He alleged that: there was no factual basis to support the homicide conviction; his plea was not knowing, intelligent, and voluntary because the circuit court's explanation of the elements of the offenses was insufficient; and his plea was not knowing, intelligent, and voluntary because of various instances of ineffective trial counsel. The circuit court denied the motion without a hearing. We affirmed. *See State v. Young*, No. 2018AP1591-CR, unpublished slip op. (WI App July 2, 2019).

In November 2020, Young filed the underlying *pro se* motion pursuant to WIS. STAT. § 974.06. He alleged that postconviction counsel was ineffective for failing to argue that he was "not only incompetent to assist in the postconviction, appeal process, yet he was also incompetent to assist trial counsel ... in any possible defense, let alone accept a plea on any counts/charge." He further claimed that his pleas were not knowing, voluntary, or intelligent because he "was suffering from an unconscious mind or some diminished mental disorder[]" and "his comprehension skills at the time was impaired[.]" Young argued that these claims are

supported by the existence of concurrent proceedings under WIS. STAT. § 51.20 in which he was civilly committed for involuntary medication.

The circuit court denied the motion without a hearing. It noted that Young “has no evidentiary or legal support for his argument that his Chapter 51 commitment establishes that the two mental health experts who evaluated him both before and after sentencing reached an erroneous conclusion about his competency[.]” It further concluded that Young “has not alleged a viable claim of ineffective assistance of postconviction counsel, because his claims are not clearly stronger than the claims counsel raised during prior postconviction/appellate proceedings and because his claims are totally lacking in evidentiary and legal support.” Young appeals.

An issue that could have been raised on direct appeal or in a previous motion is barred absent a sufficient reason for not raising the issue in the earlier proceedings. *See* WIS. STAT. § 974.06; *see also State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). “In some instances, ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal.” *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. A defendant who alleges in a WIS. STAT. § 974.06 motion that his postconviction counsel was ineffective for failing to bring certain viable claims must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought. *See State v. Starks*, 2013 WI 69, ¶6, 349 Wis. 2d 274, 833 N.W.2d 146.

“[T]o adequately raise a claim for relief, a defendant must allege ‘sufficient material facts—e.g., who, what, where, when, why, and how—that, if true, would entitle [the defendant] to the relief he seeks.’” *Romero-Georgana*, 360 Wis. 2d 522, ¶37 (citations omitted; brackets in

*Romero-Georgana*). That is, he must allege facts that support every facet of his claim and that, if true, would entitle him to relief. *See id.*, ¶38.

First, to the extent that Young’s WIS. STAT. § 974.06 claim is that his pleas were not knowing, intelligent, and voluntary, that particular claim has already been litigated. However, “[a] matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Second, Young has not made any attempt to demonstrate how the competency and ineffective assistance claims he raised in his WIS. STAT. § 974.06 motions are clearly stronger than those raised in the motion filed by postconviction counsel. *See Starks*, 349 Wis. 2d 274, ¶6.

Finally, Young’s claim that he was incompetent at all stages of his criminal proceedings is conclusory. As the circuit court noted, “[a] Chapter 51 commitment is not a substitute for competency determination under [WIS. STAT. §] 971.14.” Competency to stand trial considers whether the defendant “has sufficient present ability to consult” with counsel “with a reasonable degree of rational understanding” and whether the defendant “has a rational as well as factual understanding of the proceedings.” *See State v. Green*, 2022 WI 30, ¶11, 401 Wis. 2d 542, 973 N.W.2d 770 (citations omitted). “Although a defendant may have a psychiatric illness, a medical condition does not necessarily render the defendant incompetent to stand trial.” *Id.*, ¶12 (citations omitted). “... a defendant is incompetent to pursue postconviction relief ... when he or she is unable to assist counsel or to make decisions committed by law to the defendant with a reasonable degree of rational understanding.” *State v. Debra A.E.*, 188 Wis. 2d 111, 126, 523 N.W.2d 727 (1994).

Before a person is committed to state or county care under WIS. STAT. Ch. 51, the government must demonstrate that the person is: (1) mentally ill, (2) a proper subject for treatment; and (3) currently dangerous under at least one of five standards, the first of which is that “there is a substantial probability of physical harm to one’s self evidenced by recent threats of or attempts at suicide or serious bodily harm.”<sup>2</sup> See *Sauk Cnty. v. S.A.M.*, 2022 WI 46, ¶4, 402 Wis. 2d 379, 975 N.W.2d 162. The fact that a person with a mental illness is committed for involuntary medication because they present a danger of physical harm to themselves does not, *ipso facto*, mean the person is incapable of understanding court proceedings or assisting their attorney with those proceedings because of the same mental illness.

Young has offered no expert opinion that he was incompetent to proceed with his pleas or postconviction proceedings, nor does Young point to any authority to show that a civil commitment under WIS. STAT. § 51.20 controls the outcome of a criminal competency proceeding under WIS. STAT. § 971.14. We are therefore unpersuaded that the circuit court erroneously exercised its discretion when it denied Young’s motion without a hearing.

Upon the foregoing, 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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>2</sup> The record suggests that Young had been self-harming.