



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT IV

November 14, 2024

To:

Hon. Michael D. Zell
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Lisa M. Roth
Clerk of Circuit Court
Portage County Courthouse
Electronic Notice

Jason J. Hyatt 372470
Chippewa Valley Corr. Treatment Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

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

2023AP1433

State of Wisconsin v. Jason J. Hyatt (L.C. # 2014CF57)

Before Kloppenburg, P.J., Nashold, and Taylor, 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).

Jason Hyatt, pro se, appeals a circuit court order denying his postconviction motion filed pursuant to WIS. STAT. RULE 974.06 (2021-22).¹ Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Hyatt was convicted, following no-contest pleas, of three felony counts related to an episode of domestic abuse. Hyatt pursued a direct appeal. His appointed counsel filed a

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

no-merit report, and Hyatt filed multiple responses, raising seventy issues that he believed could support plea withdrawal or resentencing. Following an independent review of the record, this court concluded that there were no arguably meritorious issues for appeal, and we affirmed Hyatt's conviction. *See State v. Hyatt*, No. 2017AP2395-CRNM, unpublished op. and order (WI App Feb. 27, 2019).

Hyatt then filed a pro se motion in the circuit court pursuant to WIS. STAT. § 974.06. In that motion, which exceeded 100 pages, Hyatt presented claims that he grouped into five issues: (1) whether he had shown a sufficient reason for failing to raise his claims earlier; (2) whether his appellate counsel rendered constitutionally ineffective assistance of counsel in the no-merit proceedings; (3) whether the attorney who represented him at the plea hearing was constitutionally ineffective; (4) whether the attorney who represented him at sentencing was constitutionally ineffective; and (5) whether there had been a manifest injustice warranting plea withdrawal. The circuit court denied the motion without a hearing. The court concluded that Hyatt was not entitled to relief on any of his claims because they were either wrongly filed in the circuit court, barred because of the guilty plea waiver rule, barred because he had already raised them, or barred because he had not already raised them and could have. Hyatt appeals.

On appeal, Hyatt limits his arguments to his claims of ineffective assistance of counsel directed at the following attorneys: Jeffrey Jazgar, who represented him at his 2015 plea hearing; Brian Severson, who represented him at a hearing on a motion for plea withdrawal in September 2016 as well as at sentencing in November 2016; and Suzanne Edwards, who represented him in his no-merit appeal. Hyatt asserts that the ineffective assistance of counsel claims directed at Attorneys Jazgar and Severson that he raised in his WIS. STAT. § 974.06 motion were not raised on direct appeal. This assertion is inaccurate. Several of the claims of

ineffective assistance of counsel that Hyatt raised in his § 974.06 motion were previously raised in his no-merit filings: Jazgar’s failure to move for change of venue and failure to prepare adequately for trial, and the failure of both Jazgar and Severson to explain what the circuit court could consider at sentencing. Because these issues were already litigated and adjudicated in Hyatt’s no-merit appeal, we conclude that they are barred. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

In his current pro se WIS. STAT. § 974.06 motion, Hyatt presented seven ineffective assistance of counsel claims that he did not raise in the responses filed in his no-merit appeal. Five of those claims alleged ineffective assistance against Jazgar. Hyatt alleged that Jazgar inadequately argued a pretrial motion, made promises about the sentence, failed to explain the charges against Hyatt, misinterpreted the maximum sentence, and failed to investigate the case adequately. The remaining two ineffective assistance of counsel claims in Hyatt’s § 974.06 motion pertained to Severson. Hyatt alleged that Severson failed to make certain arguments at the plea withdrawal hearing and failed to argue mitigating factors at the sentencing hearing. All seven claims could have been raised in the no-merit responses, and therefore cannot be raised now, absent a sufficient reason for failing to raise them earlier. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 184-85, 517 N.W.2d 157 (1994) (any claim that could have been raised on direct appeal or in a previous § 974.06 postconviction motion is barred from being raised in a subsequent postconviction motion, absent a sufficient reason).

Our supreme court held in *State v. Allen* that, as long as this court follows the proper no-merit procedure, “a defendant is barred (absent a sufficient reason) from raising issues in a

future WIS. STAT. § 974.06 motion,” whether or not those issues were raised in a response to a no-merit report. *State v. Allen*, 2010 WI 89, ¶61, 328 Wis. 2d 1, 786 N.W.2d 124. Hyatt has not offered a sufficient reason for failing to raise his claims earlier. He asserts in a conclusory manner that certain facts and records were not available at the time he prepared his no-merit responses, but he does not explain what facts and records he was missing and what issues he was unable to raise as a result. Hyatt has failed to meet his burden of demonstrating a sufficient reason for failing to raise earlier the claims of ineffective assistance of trial counsel that he presented in his § 974.06 motion.

Finally, we address Hyatt’s argument that Attorney Edwards, his appellate counsel, rendered constitutionally ineffective assistance in the no-merit process, and that Edwards’s ineffectiveness is a sufficient reason for Hyatt’s failure to raise his current claims earlier. Specifically, Hyatt asserts that Edwards failed to discuss all potential issues of arguable merit with him. The circuit court properly concluded that a WIS. STAT. § 974.06 motion is not the appropriate vehicle for raising a claim of ineffective assistance of appellate counsel. Rather, a claim for ineffective assistance of appellate counsel must be raised in a petition for a writ of habeas corpus filed in this court pursuant to *State v. Knight*, 168 Wis. 2d 509, 522, 484 N.W.2d 540 (1992).

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals