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DISTRICT I

April 8, 2025

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Michael C. Sanders
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Willie Dorice Ford Jr. 497323
Wisconsin Secure Program Facility
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Boscobel, WI 53805-1000

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

2022AP1517

State of Wisconsin v. Willie Dorice Ford, Jr. (L.C. # 2015CF3499)

Before Donald, P.J., Geenen and Colón, 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).

Willie Dorice Ford, Jr., *pro se*, appeals from an order denying his postconviction motion brought under 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.

In 2016, as the result of a long-term heroin trafficking investigation, Ford was convicted of delivering heroin in an amount greater than fifty grams, as a party to a crime, as his second or

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

subsequent offense and as a repeater. He was sentenced to twenty-five years of initial confinement to be followed by fifteen years of extended supervision.

Ford opted to pursue postconviction relief and was appointed counsel. However, counsel was allowed to withdraw after Ford requested to proceed *pro se*.² Ford then filed a postconviction motion alleging judicial bias at sentencing, and ineffective assistance of counsel for failing to object to the alleged bias. His argument was based on the circuit court's consideration at sentencing of a charge for first-degree reckless homicide by the delivery of drugs, for which he was acquitted at his jury trial. The court denied his postconviction motion, explaining that its consideration of that charge for purposes of sentencing was a proper exercise of the court's discretion.

Ford then obtained leave from this court to file a supplemental postconviction motion. In that motion, Ford argued that newly discovered evidence—affidavits from his mother and sister—established that the drugs police found in the search of Ford's residence belonged to someone else. Ford asserted their testimony could have been used to impeach the testimony of a detective involved in the case, and alleged that his trial counsel was ineffective for failing to call them as witnesses. The circuit court also denied that supplemental postconviction motion, concluding that based on the totality of the evidence against Ford, there was not a reasonable probability that the proffered testimony would have affected the outcome of the trial.

² Ford's counsel filed a postconviction motion prior to withdrawing, arguing prosecutorial misconduct. However, counsel withdrew before a decision was rendered on that motion, and Ford informed the circuit court that he would file a replacement postconviction motion.

Ford appealed those decisions. He further argued on appeal that the circuit court had erred in denying his motion to suppress evidence found during a strip search. This court affirmed. *See State v. Ford*, No. 2018AP797-CR, unpublished slip op. ¶¶1-4, 45 (WI App Mar. 12, 2019).

Subsequently, Ford, by counsel, filed the WIS. STAT. § 974.06 motion underlying this appeal. In that motion, he argued that there was insufficient evidence at trial to support his conviction. The basis for this argument was that because the State had amended the information from a conspiracy charge to party to a crime liability, it was “required to present evidence of a single, large transaction of more than 50 grams.”

Additionally, Ford asserted that he was not procedurally barred from bringing this claim, despite not having raised it in his direct appeal. In support, he relied on *State v. Miller*, 2009 WI App 111, 320 Wis. 2d 724, 772 N.W.2d 188, for the premise that a sufficiency of the evidence claim could be brought directly in a WIS. STAT. § 974.06 motion, as opposed to being raised indirectly as a claim of ineffective assistance of counsel.

The circuit court rejected this argument. It determined that under *Miller*, a defendant must still meet the requirement of demonstrating a sufficient reason for failing to raise the current claim in a prior postconviction motion or direct appeal, pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). *See Miller*, 320 Wis. 2d 724, ¶24 n.9. Ford did not provide a sufficient reason for failing to raise the claim in previous postconviction proceedings; in fact, he provided no reason. Therefore, the court found that his motion was procedurally barred.

The court further found that Ford’s argument failed on the merits. It observed that under the “plain language” of WIS. STAT. § 971.365 (2015-16), a procedural statute relating to crimes involving certain controlled substances, the State was permitted to prosecute multiple drug transactions as a single transaction. The court therefore denied Ford’s motion. This appeal follows.

Ford proceeds *pro se* for this appeal. In his appellate briefs, Ford reshapes his argument from an insufficiency of the evidence claim to a claim that the complaint was defective with regard to the offense charged, and therefore the circuit court lacked subject matter jurisdiction in the matter. Ford did not present this argument in his motion to the circuit court.³ Arguments raised for the first time on appeal are generally deemed forfeited. *Northbrook Wis., LLC v. City of Niagara*, 2014 WI App 22, ¶20, 352 Wis. 2d 657, 843 N.W.2d 851.

Moreover, Ford’s claims are procedurally barred. Ford acknowledges the procedural bar of *Escalona*, but alleges ineffective assistance of postconviction counsel as a sufficient reason for failing to previously raise his current claim. In support, he argues that he “could not timely bring this claim in his direct appeal” due to the alleged failure of postconviction counsel to timely provide him with the court record after counsel’s withdrawal from representation.

Ford misconstrues the sufficient reason standard. “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,

³ We note that, in any event, “no circuit court is without subject matter jurisdiction to entertain actions of any nature whatsoever.” *City of Eau Claire v. Booth*, 2016 WI 65, ¶18 & n.10, 370 Wis. 2d 595, 882 N.W.2d 738 (citation omitted).

360 Wis. 2d 522, 849 N.W.2d 668. However, a defendant who makes this allegation in a Wis. STAT. § 974.06 motion “must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought.” *Id.*, ¶4. “The ‘clearly stronger’ standard is appropriate when postconviction counsel raised other issues before the circuit court, thereby making it possible to compare the arguments now proposed against the arguments previously made.” *Id.*, ¶46. Whether a § 974.06 motion alleges a sufficient reason “for failing to bring available claims earlier” is a question of law that we review *de novo*. *Id.*, ¶30.

Under the circumstances here, the clearly stronger standard cannot be applied. Ford’s postconviction counsel did not present any arguments in Ford’s direct appeal; rather, Ford represented himself in his direct appeal after waiving his right to postconviction counsel. Ford cannot satisfy the clearly stronger standard to support a claim of ineffective assistance of postconviction counsel when Ford himself presented the previous claims in his direct appeal. *See id.*, ¶46.

Ford presents no other reason for failing to bring his current claims in his direct appeal. Therefore, the claims are procedurally barred. *See Escalona-Naranjo*, 185 Wis. 2d at 185.

Additionally, Ford claims that he is entitled to a new trial in the interests of justice. “We may grant a new trial in the interest of justice when it appears from the record that the real controversy has not been fully tried.” *State v. Williams*, 2006 WI App 212, ¶36, 296 Wis. 2d 834, 723 N.W.2d 719. However, because this reversal power is “formidable,” we utilize it “sparingly and with great caution.” *Id.* We find nothing in the record that would support discretionary reversal. We therefore decline Ford’s request for a new trial.

Accordingly, we affirm the order of the circuit court denying Ford's WIS. STAT. § 974.06 motion.

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.

Samuel A. Christensen
Clerk of Court of Appeals