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 I

May 28, 2025

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

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

Anne Christenson Murphy
Electronic Notice

Larry V. Henderson, Jr. 290451
Redgranite Correctional Inst.
P.O. Box 925
Redgranite, WI 54970-0925

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

2023AP1634 State of Wisconsin v. Larry V. Henderson, Jr. (L.C. # 2017CF4179)

Before White, C.J., Donald, P.J., and Colón, 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).

Larry V. Henderson, Jr., *pro se*, appeals the order denying his postconviction motion seeking to withdraw his guilty plea. 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 (2023-24).[1] We summarily affirm.

In 2017, Henderson was charged with one count of repeated sexual assault of the same child–at least three violations of first-degree sexual assault, and two counts of repeated sexual

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

assault of the same child—at least three violations of first- or second-degree sexual assault. According to the complaint, the victim, who was fourteen years old at the time, told police that Henderson was her mother's boyfriend, and that he had sexually assaulted her hundreds of times—almost daily—starting when she was eight years old.

Henderson opted to resolve the charges with a plea. Pursuant to the plea agreement, Henderson pled guilty to one count of repeated sexual assault of the same child—at least three violations of first- or second-degree sexual assault, and the other two charges were dismissed and read in for sentencing purposes. As a result of this agreement, Henderson no longer faced a twenty-five-year mandatory minimum term of initial confinement for the first count of repeated sexual assault of the same child with at least three violations of first-degree sexual assault. The circuit court imposed a twenty-six-year sentence bifurcated as seventeen years of initial confinement and nine years of extended supervision.

Henderson filed a postconviction motion seeking plea withdrawal. He asserted his trial counsel had coerced him into pleading guilty, misrepresenting to Henderson that he would receive a sentence of no more than seven years. A ***Machner*** hearing[2] was held, during which Henderson and his trial counsel testified. The circuit court ultimately denied the motion.

Henderson appealed that decision pursuant to the no-merit procedure set forth in WIS. STAT. RULE 809.32 (2019-20) and ***Anders v. California***, 386 U.S. 738 (1967). Henderson filed a response, and an amended response, to the no-merit report filed by his appellate counsel. Among other things, Henderson raised the issue that his plea was not knowingly, voluntarily and

[2] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

intelligently entered, claiming that he did not "understand the implications of giving up his constitutional protections" due to his low level of education.

After independently reviewing the record in accordance with ***Anders***, and considering the issues Henderson raised in his responses, this court concluded that there were no issues of arguable merit. ***State v. Henderson***, No. 2019AP2297-CRNM, unpublished slip op. and order (Oct. 4, 2022). We therefore accepted the no-merit report, affirmed the judgment and order, and discharged appellate counsel of the obligation to further represent Henderson. ***Id.*** at 4-5.

Henderson subsequently filed the postconviction motion underlying this appeal. In that motion, he again sought to withdraw his plea, alleging a deficiency during the plea colloquy. Specifically, Henderson claimed that the circuit court did not "personally question" him about whether he was guilty of the count to which he pled.

The circuit court rejected this claim. It observed that the issue of whether Henderson's plea was knowingly, voluntarily, and intelligently entered was previously raised and reviewed in Henderson's no-merit appeal, and Henderson is therefore procedurally barred from raising it. It further found that Henderson's claim would fail on the merits, concluding that any potential defect in the plea colloquy was of "no consequence" because the "only inference possible from the facts and circumstances in the record is that the defendant intended to plead guilty." It therefore denied Henderson's motion. This appeal follows.

Procedurally, a defendant is precluded from raising any claim in a WIS. STAT. § 974.06 motion—a postconviction motion that may be brought by a defendant after the time for appeal is

expired—if that claim could have been brought on direct appeal.[3] *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 173, 517 N.W.2d 157 (1994). Furthermore, "a prior no[-]merit appeal may trigger the procedural bar of ***Escalona-Naranjo*** and WIS. STAT. § 974.06(4)[.]" ***State v. Tillman***, 2005 WI App 71, ¶21, 281 Wis. 2d 157, 696 N.W.2d 574. This procedural bar may be imposed as long as the no-merit decision "carries a sufficient degree of confidence warranting the application of the procedural bar under the particular facts and circumstances of the case." ***Id.***, ¶20.

More specifically, our supreme court has ruled that:

> so long as the court of appeals follows the no-merit procedure required in ***Anders***, a defendant is barred (absent a sufficient reason) from raising issues in a future WIS. STAT. § 974.06 motion, whether or not he raised them in a response to a no-merit report, because the court will have performed an examination of the record and determined that any issues noted or any issues that are apparent, to be without arguable merit.

State v. Allen, 2010 WI 89, ¶61, 328 Wis. 2d 1, 786 N.W.2d 124.

As stated above, the record in this case was fully reviewed by this court in the no-merit appeal, pursuant to ***Anders***. That review, which included an assessment of the plea colloquy, revealed no arguable merit to any issues that could be raised on appeal. *See* ***Henderson***, No. 2019AP2297-CRNM at 3.

[3] Although Henderson did not reference WIS. STAT. § 974.06 in his current motion, in reviewing motions filed by *pro se* defendants "we look to the facts pleaded, not to the label given the papers filed, to determine whether the party should be granted relief." *See* ***Amek bin-Rilla v. Israel***, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983).

We are satisfied that the no-merit procedures were followed in Henderson's previous appeal. Therefore, the issues he currently raises with regard to his plea are procedurally barred. *See* ***Tillman***, 281 Wis. 2d 157, ¶20.

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