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**DISTRICT II**

May 21, 2025

To:

Hon. Wayne J. Marik  
Circuit Court Judge  
Electronic Notice

Anne Christenson Murphy  
Electronic Notice

Hon. Faye M. Flancher  
Circuit Court Judge  
Electronic Notice

James R. Turner #122766  
Fox Lake Correctional Institution  
W10237 Lake Emily Road  
Fox Lake, WI 53933

Amy Vanderhoef  
Clerk of Circuit Court  
Racine County Courthouse  
Electronic Notice

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

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|              |                                       |
|--------------|---------------------------------------|
| 2024AP632-CR | State of Wisconsin v. James R. Turner |
| 2024AP633-CR | (L.C. #1987CF764 and #1988CF141)      |

Before Neubauer, Grogan, and Lazar, 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).**

James R. Turner, pro se, appeals from orders of the circuit court denying his request for habeas relief without a hearing. He claims the court erred when it concluded his claim was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

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).<sup>1</sup> We affirm.

In a 1988 jury trial, Turner was convicted on 15 criminal counts in two consolidated cases stemming from two separate home invasions in July and October of 1987. In both cases, the victims of these crimes were elderly women. The circuit court sentenced Turner to a total of 314 years of imprisonment. For Turner’s direct appeal, his counsel filed a no-merit report because counsel concluded there were no meritorious appellate issues. *See Turner v. Richardson*, No. 2019AP1171, unpublished op. and order (Oct. 14, 2020). Turner filed a response to his counsel’s no-merit report identifying appellate issues he believed had merit. This court affirmed his convictions upon concluding there were no meritorious issues on appeal.<sup>2</sup> *Id.*

Between 1991 and 1995, Turner filed three WIS. STAT. § 974.06 motions.<sup>3</sup> In 2005, Turner filed a fourth § 974.06 motion. The circuit court held a hearing at which it “meticulously went through Mr. Turner’s motion and compared it” to the previous three § 974.06 motions Turner had filed. The court then denied the motion, concluding that Turner’s motion presented issues that were either previously raised or, to the extent it alleged new claims, Turner failed to

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

<sup>2</sup> *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), applies even when the direct appeal proceeded as a no-merit appeal. *See State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574.

<sup>3</sup> As the State notes in its Response brief, “the appellate record does not contain all the documents related to Turner’s no-merit appeal, multiple postconviction motions, and petitions for writ of habeas corpus[.]” Accordingly, where necessary, we rely on our decisions addressing Turner’s prior appeals, as well as the circuit court’s March 14, 2024 order denying Turner’s petition for writ of habeas corpus that incorporates a prior June 2019 court order detailing Turner’s multiple prior filings, in describing the relevant procedural history.

provide a sufficient reason for not previously raising them. Turner filed an appeal of the court’s decision, but later voluntarily dismissed that appeal. We dismissed Turner’s appeal pursuant to WIS. STAT. RULE 809.18. *See State v. Turner*, Nos. 2008AP2324 and 2008AP2325, unpublished op. and order, at 2 (WI App July 20, 2010).

Thereafter, Turner filed two petitions for a writ of habeas corpus, both of which were denied by the circuit court as procedurally barred; we affirmed the circuit court’s orders after Turner appealed from both. *Id.* at 2-3 Then, on November 13, 2023, Turner filed a petition to “readdress” habeas corpus, which the circuit court construed as a motion for reconsideration of its June 2019 order denying him habeas relief. (Formatting altered.) The circuit court also denied that motion, which is the subject of the instant appeal.

Whether a defendant’s claims are prohibited by *Escalona-Naranjo* is a question of law we review de novo. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). Similarly, whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law we review de novo. *See State v. Kletzien*, 2011 WI App 22, ¶¶9, 16, 331 Wis. 2d 640, 794 N.W.2d 920.

We reject each of Turner’s claims. First, Turner asserts the “circuit court abused its discretion when relabeling his habeas corpus petition to a reconsider motion” in the March 14, 2024 order. Although Turner is correct that the court was required to liberally construe his pro se pleading and to analyze the relief sought, *see, e.g., State v. Romero-Georgana*, 2014 WI 83, ¶69, 360 Wis. 2d 522, 849 N.W.2d 668, he fails to show the court did not do so. The court considered his petition “to Readdress Habeas Corpus,” construed it as a motion to reconsider its June 2019 order denying habeas relief, and denied it as untimely. Further, the court determined

that Turner’s request for habeas relief merely rehashed arguments he made in prior, unsuccessful postconviction motions, and concluded the request was procedurally barred pursuant to WIS. STAT. § 974.06(8).

Turner also contends the circuit court erroneously exercised its discretion by applying *Escalona-Naranjo* retroactively in violation of the prohibition on ex post facto application of the criminal law. He argues that, because *Escalona-Naranjo* was decided in 1994, the procedural bar rule outlined therein “was not active at the time of his conviction and sentence” in 1988 and therefore constituted a “new rule of criminal procedure” that could not be applied “retroactively.”)

Turner is mistaken. While Turner’s 1988 conviction preceded *Escalona-Naranjo*, WIS. STAT. § 974.06 existed at that time in substantially the same form as it does now.<sup>4</sup> The procedural bar rule set forth in *Escalona-Naranjo* is a consequence of the statutory requirement in § 974.06(4) that defendants must “consolidate all their postconviction claims into *one* motion or appeal[,]” absent a “sufficient reason” for failing to do so. *Escalona-Naranjo*, 185 Wis. 2d at 178, 181. Further, habeas petitions are explicitly subject to the limitations set forth in § 974.06 pursuant to WIS. STAT. § 782.01.

Moreover, a habeas petition “must contain a copy of any motion made under [WIS. STAT. §] 974.06 and shall indicate the disposition of the motion and the court in which the disposition was made. If no motion was made, the petition shall so state.” WIS. STAT. § 782.03. A habeas

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<sup>4</sup> See WIS. STAT. § 974.06 (1987-88).

petition is barred if the petitioner “failed to apply for relief, by motion, to the court which sentenced the person, or that the court has denied the person relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his or her detention.” Sec. 974.06(8). To the extent Turner’s most recent motion presents new claims for consideration, neither Turner’s petition nor his briefs indicate a reason, let alone a sufficient reason, these claims were not included within his original postconviction motion.

Therefore,

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

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

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*