



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

July 29, 2025

To:

Hon. Paul R. Van Grunsven
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
Electronic Notice

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

Robert Carr Jr. 313510
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2023AP1801

State of Wisconsin v. Robert Carr, Jr. (L.C. # 2016CF3473)

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).

Robert Carr, Jr., pro se, appeals from an order of the circuit court that denied his “complaint ... to vacate the court’s void judgment,” which the circuit court construed as a motion 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. The order is summarily affirmed.

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

On August 2, 2016, police executed a “knock and announce” warrant at Carr’s home. Carr was taken into custody without an arrest warrant that day, and his initial appearance was held on August 6, 2016. On April 11, 2018, a jury convicted Carr on two counts of manufacture or delivery of heroin as party to a crime and one count of possession of a firearm by a convicted felon. The trial court² imposed consecutive sentences totaling 25 years’ imprisonment.

In November 2019, with the assistance of appointed counsel, Carr filed a postconviction motion and a supplement, alleging “new information” and alleging ten instances of ineffective assistance of his three trial attorneys. The trial court denied relief. Carr appealed. In a 27-page decision, we affirmed. *See State v. Carr*, No. 2020AP360-CR, unpublished slip op., ¶1 (WI App May 4, 2021).

In February 2022, Carr filed a pro se motion for postconviction relief, pursuant to WIS. STAT. § 974.06. He raised five claims of ineffective assistance of postconviction counsel, and three claims of ineffective assistance or “new information,” based on postconviction counsel’s failure to raise “issues of trial counsel ineffectiveness and other arguable issues[.]” The trial court denied this motion as procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and because it was “completely conclusory and insufficient to warrant relief of any kind.” Carr did not appeal.

In September 2023, Carr filed the document underlying this appeal, which he called a “complaint under WIS. STAT. § 806.07(1)(d) to vacate court’s void judgment.” He alleged that

² The Honorable Janet C. Protasiewicz imposed sentence and denied Carr’s first two postconviction motions, and will be referred to as the trial court.

the State had violated *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991), because no probable cause determination was made within 48 hours of his warrantless arrest. He also alleged that his trial attorneys were ineffective for failing to challenge his warrantless arrest, the *Riverside* violation, and a witness statement obtained during the delay period, and that his postconviction attorney was ineffective for not raising these claims against the trial attorneys. He asked the circuit court to vacate his conviction, suppress the witness statement, and remand for a new trial. The circuit court³ construed the motion as a subsequent WIS. STAT. § 974.06 motion and denied it as procedurally barred by *Escalona*. Carr appeals.

Absent a sufficient reason, a defendant may not bring claims in a WIS. STAT. § 974.06 motion if the claims could have been raised in a prior motion or direct appeal. *Escalona*, 185 Wis. 2d at 185; *State v. Romero-Georgana*, 2014 WI 83, ¶34, 360 Wis. 2d 522, 849 N.W.2d 668. Whether a procedural bar applies is a question of law. *State v. Tillman*, 2005 WI App 71, ¶14, 281 Wis. 2d 157, 696 N.W.2d 574.

Carr first complains that the circuit court erred in treating his WIS. STAT. § 806.07(1)(d) “complaint” as a motion under WIS. STAT. § 974.06. However, § 806.07 is not a proper mechanism for relief in a criminal case. See *State v. Henley*, 2010 WI 97, ¶5, 328 Wis. 2d 544, 787 N.W.2d 350. As our supreme court has explained, WIS. STAT. §§ 974.02 and 974.06 are “the primary statutory means of postconviction, appeal, and post-appeal relief for convicted criminal defendants,” and if a defendant could use a “civil procedure statute ... to challenge their

³ The Honorable Paul R. Van Grunsven reviewed and denied Carr’s 2023 motion and will be referred to as the circuit court.

conviction,” they would not “ever use §§ 974.02 and 974.06.” *Henley*, 328 Wis. 2d 544, ¶70. Accordingly, the circuit court did not err in construing Carr’s “complaint” as a § 974.06 motion.⁴

Certain claims, like claims of ineffective assistance of trial counsel, must be preserved for appeal by a postconviction motion. *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996). Thus, ineffective assistance of postconviction counsel for failing to preserve a claim may sometimes constitute a sufficient reason for not raising that claim in an earlier proceeding. *Id.* at 682. However, even if ineffective assistance of postconviction counsel is a sufficient reason for Carr’s failure to raise his current issues in the original 2019 postconviction motion, that ineffectiveness does not explain Carr’s own failure to raise the current issues in his February 2022 pro se motion. In fact, Carr offers no explanation at all for his failure to raise his current issues in the 2022 petition. Accordingly, we agree with the circuit court that Carr’s current postconviction motion is barred by *Escalona*.

Upon the foregoing,

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

⁴ We note that WIS. STAT. § 806.07(1)(d) allows a party to seek relief from judgment on grounds that the judgment is void. Carr’s basis for claiming his judgment is void is the alleged violation of *County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). However, a *Riverside* violation is not a jurisdictional defect that would render a judgment void *ab initio*, nor would it cause the circuit court to lose competency over the case. *See State v. Golden*, 185 Wis. 2d 763, 769, 519 N.W.2d 659 (Ct. App. 1994).