

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 6, 2007**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2006AP995**

Cir. Ct. No. 1998CF1342

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**LARRY WOODROW MYARTT,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Larry Myartt appeals *pro se* from the order of the circuit court that denied his motion for postconviction relief without holding a

hearing. Because we conclude that the circuit court properly denied the motion, we affirm.

¶2 In 2000, Myartt was convicted after a jury trial of one count of armed robbery with use of force. The court sentenced him to thirty years in prison. This court affirmed his conviction, and the supreme court denied his petition for review. Then in 2002, Myartt filed a petition under *State v. Knight*, 168 Wis. 2d 509, 512-13, 484 N.W.2d 540 (1992), alleging that he received ineffective assistance of postconviction counsel because counsel did not raise in a petition for review the argument that the investigatory stop was illegal. We denied the petition, concluding that the same issue had been raised and denied in his direct appeal, and that counsel had filed a petition and supplemental petition for review. The supreme court denied his petition for review of this order.

¶3 In 2006, Myartt filed the motion for postconviction relief in the circuit court that is the subject of this appeal. In this motion, he alleged that his trial counsel was ineffective because he did not adequately argue a motion for a mistrial or for judgment notwithstanding the verdict. The court denied the motion without holding a hearing finding that Myartt had previously raised the mistrial issue and he was precluded from raising the other issues because he could have raised them in his direct appeal or *Knight* petition. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

¶4 Myartt argues to this court that the trial court erred when it denied his motion without holding an evidentiary hearing. A circuit court may refuse to hold an evidentiary hearing “if the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief....”

*State v. Bentley*, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996) (citations omitted). This determination is reviewed under the erroneous exercise of discretion standard. *Id.* at 311. Claims of error that could have been raised in the direct appeal or in a previous motion under WIS. STAT. § 974.06, cannot be raised in a subsequent § 974.06 motion unless the appellant offers a sufficient reason for failing to do so earlier. *State v. Lo*, 2003 WI 107, ¶15, 264 Wis. 2d 1, 665 N.W.2d 756.

¶5 We conclude that the circuit court did not err when it denied Myartt's motion without holding an evidentiary hearing. The record before the circuit court conclusively demonstrated that Myartt was not entitled to the relief he sought. In the circuit court, Myartt argued that he received ineffective assistance of trial counsel and that the trial court erred. The issues Myartt raised either had been previously raised, or he did not offer a reason for his failure to raise them in the earlier proceedings. In his brief to this court, he asserts that his postconviction counsel was ineffective for failing to raise the issues in the previous proceedings. Myartt, however, may not raise in this appeal an issue that he did not raise before the circuit court. *Segall v. Hurwitz*, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983).

¶6 We conclude that the circuit court properly denied his motion without holding a hearing. For the reasons stated, we affirm the order of the circuit court.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

