

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 18, 2003**

Cornelia G. Clark  
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. 02-3113  
STATE OF WISCONSIN**

**Cir. Ct. No. 98-CT-1309**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JEFFREY L. THOMPSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Rock County:  
JOHN W. ROETHE, Judge. *Affirmed.*

¶1 LUNDSTEN, J.<sup>1</sup> Jeffrey L. Thompson appeals, pro se, an order of the circuit court denying his postconviction motion without a hearing. Thompson

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

argues that the court erred in denying his request for postconviction relief under WIS. STAT. § 974.06. For the following reasons, we affirm.

¶2 On November 30, 1998, Thompson was issued a citation for driving after revocation, sixth offense. Thompson was found guilty by a jury. Thompson then filed a postconviction motion under WIS. STAT. § 809.30(2)(h) requesting the court to either expunge his remaining fine, or to convert the fine to a period of confinement to run concurrent with another prison term. The court granted the request to convert the fine to a prison sentence. In 2001, Thompson filed a WIS. STAT. § 974.06 motion alleging ineffective assistance of counsel, trial court error in not allowing him to present evidence, lack of probable cause, and improper revocation of his license. The circuit court denied that motion, and this court affirmed. In 2002, Thompson filed a second § 974.06 motion, alleging once more that his citation for driving after revocation was illegal because his license had not been properly revoked. That motion was denied by the circuit court and is the subject of this appeal.

¶3 Thompson contends that his conviction for operating after revocation in violation of WIS. STAT. § 343.44(1) (1995-96) should be overturned because newly discovered evidence will show that his license had been improperly revoked. Thompson argues that under WIS. STAT. § 344.34, his auto insurance was not properly terminated, thus under WIS. STAT. § 343.34 the Division of Motor Vehicles had no grounds to revoke his license. Thompson argues that he only became aware of § 344.34 after he had filed his previous WIS. STAT. § 974.06 motion. Thompson asserts that this late discovery of § 344.34 satisfies the five requirements for a new trial based on newly discovered evidence and seems also to argue that he was justified in not including this challenge in his previous § 974.06 motion. We disagree.

¶4 The issue whether the Division of Motor Vehicles properly revoked Thompson's license was argued in the prior WIS. STAT. § 974.06 motion. One piece of allegedly newly discovered evidence is a letter sent to Thompson on November 4, 1998, indicating that his license was revoked effective November 15, 1998, because his insurance filing had been cancelled. However, this letter was introduced at trial and, thus, is not "new evidence."

¶5 Thompson's second newly discovered "evidence" argument is his new legal argument based on WIS. STAT. § 344.34. However, a legal argument is not evidence. Accordingly, Thompson has simply offered a new legal argument for an issue he raised in previous proceedings. WISCONSIN STAT. § 974.06(4) precludes a defendant from raising by way of a § 974.06 motion any ground for relief that was not raised in a prior postconviction motion, unless the defendant supplies a "sufficient reason" for the earlier omission. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Thompson has not presented any arguable "sufficient reason" for failing to raise this legal argument in his prior § 974.06 motion.

¶6 Accordingly, we affirm the order of the circuit court.

¶7 We note that we decide this appeal without benefit of a responsive brief from the State. On March 18, 2003, after the time for a State's brief had passed, this court advised the State that if it did not file a brief, the appeal might be summarily reversed. The State did not respond. On April 8, 2003, this court directed the State to either submit a brief or concede error. The State did respond this time. The prosecutor handling the matter wrote:

Since Mr. Thompson is appealing an operating after revocation conviction and he has already served his sentence, I do not intend to submit a brief in this case. I do

not quite understand why a concession of error is necessary as the Court had previously indicated that the appeal would be disposed of summarily and could be summarily reversed. It is also my belief that Mr. Thompson had earlier appealed his conviction on this same case at which time the State also did not respond and the Court summarily affirmed his conviction. In any case, given the option of submitting an appellate brief or conceding error, the State will concede error.

¶8 It is true that this court will sometimes reject an appeal, even when a respondent does not file a brief. That was done once before in this matter, and we do it again today. However, the State should not be confused about what is going on here. The court of appeals frequently rules against parties that decline to submit an appellate brief. Any time the State or any other respondent declines to file a brief, it does so at great risk that the matter will be decided against the respondent.<sup>2</sup> Our system of jurisprudence depends heavily on adversarial argument to assist the courts in reaching the most legally accurate and just results.

*By the Court.*—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.

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<sup>2</sup> “We may summarily reverse a judgment or order if the respondent fails to file a brief, Rule 809.83(2), Stats., and we usually do.” *State ex rel. Blackdeer v. Township of Levis*, 176 Wis. 2d 252, 260, 500 N.W.2d 339 (Ct. App. 1993) (citation omitted); *see also Lee v. LIRC*, 202 Wis. 2d 558, 550 N.W.2d 449 (Ct. App. 1996) (upholding circuit court’s dismissal of petition for WIS. STAT. ch. 227 review, based on petitioner’s failure to file a brief as circuit court had ordered); *State v. Chu*, 2002 WI App 98, ¶41, 253 Wis. 2d 666, 643 N.W.2d 878 (“Unrefuted arguments are deemed admitted.”), *review denied*, 2002 WI 109, 254 Wis. 2d 263, 648 N.W.2d 478, *cert. denied*, 537 U.S. 975.

