

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 15, 2011**

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. 2009AP2526**

**Cir. Ct. No. 2002CF5886**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES M. STAR,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL L. KONKOL, Judge. *Affirmed.*

Before Curley, P.J., Kessler, and Brennan, JJ.

¶1 PER CURIAM. Charles M. Star, *pro se*, appeals an order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2009-10).<sup>1</sup> Star

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

argues: (1) that he received ineffective assistance of counsel because his attorney did not raise issues before the circuit court that Star believes had merit; (2) that the circuit court misused its discretion in refusing to allow him to raise additional issues when he tried to do so the day of the hearing; and (3) that we should reverse his conviction under WIS. STAT. § 752.35. We affirm.

¶2 Star first argues that he received ineffective assistance of counsel when he was litigating this motion in the circuit court. Star filed this *pro se* motion to withdraw his guilty plea pursuant to WIS. STAT. § 974.06 because the time for pursuing a direct appeal from his 2002 conviction had long elapsed and the State Public Defender refused to appoint counsel. After the motion was filed, the circuit court appointed Attorney Paul Bonneson to represent Star at county expense. Even though Attorney Bonneson was appointed by the court, Star did not have a *right* to representation by counsel, as he would have had this been a direct appeal. See *State v. Evans*, 2004 WI 84, ¶32, 273 Wis. 2d 192, 682 N.W.2d 784 (“There is no constitutional right to counsel on a § 974.06 motion.”). Because Star did not have the right to counsel, he did not have a constitutional right to the effective assistance of counsel. See *Coleman v. Thompson*, 501 U.S. 722, 752 (1991) (“[W]here there is no constitutional right to counsel there can be no deprivation of effective assistance.”). Therefore, we reject this argument.

¶3 Star next argues that the circuit court erred when it refused to allow him to belatedly raise additional issues. The morning of the *Machner*<sup>2</sup> hearing, Star explained to the court that he wanted to raise several issues that his attorney had not raised. The circuit court explained to Star that he had a right to proceed

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<sup>2</sup> *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

with counsel's assistance, in which case Star would have to let counsel decide which issues to raise, or he had a right to proceed without counsel's assistance and raise whatever issues he would like to raise. After a lengthy discussion, Star decided to proceed with counsel's assistance. Because Star chose to proceed with the assistance of counsel, he had no right to raise additional *pro se* issues. See *State v. Redmond*, 203 Wis. 2d 13, 17, 552 N.W.2d 115 (Ct. App. 1996) ("If a defendant elects to be represented by counsel, that precludes simultaneous *pro se* activity."). We reject this argument.

¶4 Finally, Star argues that we should reverse his underlying judgment of conviction from 2002 under WIS. STAT. § 752.35. It is well-established that "[o]ur power of discretionary reversal under sec. 752.35 ... may be exercised only in direct appeals from judgments or orders." *State v. Allen*, 159 Wis. 2d 53, 55, 464 N.W.2d 426 (Ct. App. 1990). That statute does not allow us to exercise our power of discretionary reversal to reverse a motion for postconviction relief under WIS. STAT. § 974.06. Therefore, we reject this argument.<sup>3</sup>

*By the Court.*—Order affirmed.

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

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<sup>3</sup> After briefing was complete, Star filed a motion to vacate the DNA surcharge it imposed against him. See *State v. Cherry*, 2008 WI App 80, 312 Wis. 2d 203, 752 N.W.2d 393. Because the circuit court imposed this surcharge, Star must file this motion to vacate the surcharge with the circuit court, not this court.

