

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 22, 2004

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. 03-3120
STATE OF WISCONSIN**

Cir. Ct. No. 93CF931789

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JACK BOO WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN A. FRANKE, Judge. *Affirmed.*

Before Vergeront, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Jack Williams appeals an order denying his most recent postconviction motion. We affirm for the reasons discussed below.

BACKGROUND

¶2 Williams was convicted of first-degree intentional homicide while armed with a dangerous weapon, as a party to the crime, in 1994. His conviction was affirmed on direct appeal, and the Wisconsin Supreme Court denied review. Williams proceeded to file a series of postconviction motions under WIS. STAT. § 974.06 (2001-02).¹ This court concluded that Williams was entitled to an evidentiary hearing on his claims of ineffective assistance of trial, postconviction, and appellate counsel. The State Public Defender appointed Attorney James Lucius to represent Williams at the evidentiary hearing on remand.

¶3 The trial court denied Williams's postconviction claims following the evidentiary hearing. Attorney Lucius moved for an extension of the time to appeal, which was erroneously granted under the mistaken assumption that the case was proceeding under WIS. STAT. RULE 809.30, rather than WIS. STAT. § 974.06. By the time the error was discovered, the time to appeal had expired and this court concluded that we lacked jurisdiction to review the trial court's decision following the evidentiary hearing.

¶4 Williams then filed another postconviction motion, alleging that counsel's failure to file a timely notice of appeal from the order denying his WIS. STAT. § 974.06 motion constituted ineffective assistance of counsel. The trial court denied the motion, and that is the subject of this appeal.

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

DISCUSSION

¶5 There is no constitutional right to counsel in collateral proceedings after a direct appeal. *Pennsylvania v. Finley*, 481 U.S. 551, 556 (1987). Because a postconviction motion filed under WIS. STAT. § 974.06 is a collateral attack treated as civil in nature, a defendant has no right to counsel in such a proceeding. *State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 648-49, 579 N.W.2d 698 (1998). Rather, the decision to appoint counsel for a § 974.06 motion lies within the discretion of the State Public Defender's Office. WIS. STAT. § 977.05(4)(j). Where there is no constitutional right to counsel, there can be no constitutional claim for ineffective assistance of counsel. See *Stroe v. INS*, 256 F.3d 498, 500 (7th Cir. 2001).

¶6 Here, Attorney Lucius was appointed to represent Williams on remand at the discretion of the State Public Defender. Williams had no constitutional right to the assistance of counsel on his WIS. STAT. § 974.06 motion. Therefore, he cannot maintain a claim for ineffective assistance of counsel.

By the Court.—Order affirmed.

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

