



In September 2014, the State charged Husbeck with second-degree sexual assault of a child, arising from allegations that Husbeck, then thirty-one years old, had sexual intercourse with Mary,<sup>2</sup> who was then fourteen years old. At sentencing, defense counsel addressed a potential issue with the presentence investigation report. Specifically, defense counsel clarified that a juvenile adjudication in Michigan for “Contributing to Delinquency-Accosting Children for Immoral Purposes” had been expunged. Husbeck and his counsel explained that the case resulted from Husbeck having sexual intercourse with his fourteen-year-old girlfriend when he was sixteen years old.

The sentencing court noted that the present offense was serious, that it was punishable by up to a forty-year sentence, and that Mary had attempted suicide following the sexual assault. The court added that Husbeck, “of all people,” knows “that you leave kids alone because you already got in trouble for this when you were [sixteen] years old.” The court ultimately imposed a fifteen-year sentence consisting of ten years of initial confinement followed by five years of extended supervision.

On direct appeal, Husbeck’s appointed counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there was no arguable basis to challenge Husbeck’s conviction. Husbeck was advised of his right to respond to the report, but he did not respond. Upon our independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we concluded there was no arguable basis for appeal and summarily affirmed the judgment. *See State v. Husbeck*, No. 2016AP979-CRNM, unpublished op. and order (WI App Aug. 8, 2017).

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<sup>2</sup> Pursuant to the policy underlying WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

Husbeck subsequently filed the underlying WIS. STAT. § 974.06 motion for resentencing, claiming he was sentenced based on inaccurate information because his juvenile conviction had been expunged. The circuit court denied the motion because the sentencing court knew at sentencing that Husbeck's juvenile conviction had been expunged. This appeal follows.

We conclude that Husbeck's inaccurate information claim is barred by WIS. STAT. § 974.06(4) and *Escalona-Naranjo*. Successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly alleged errors were not previously raised. *Escalona-Naranjo*, 185 Wis. 2d at 185. The bar to serial litigation may also apply when the direct appeal was conducted pursuant to the no-merit procedures of WIS. STAT. RULE 809.32. *State v. Tillman*, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574; *see also State v. Allen*, 2010 WI 89, ¶¶35-41, 328 Wis. 2d 1, 786 N.W.2d 124. Absent a sufficient reason for doing so, a defendant may not raise issues in later proceedings that could have been raised in the no-merit proceeding if the no-merit procedures were followed and the court has sufficient confidence in the outcome of the no-merit proceeding to warrant application of the procedural bar. *Allen*, 328 Wis. 2d 1, ¶62.

Husbeck has not demonstrated that his no-merit appeal was procedurally inadequate. Husbeck was afforded the opportunity to respond to his counsel's report. Although Husbeck did not respond, he was not required to do so. *See id.*, ¶39. However, the fact that a defendant does not file a no-merit response is not, by itself, a sufficient reason to permit the defendant to raise new claims. *Id.*, ¶55. Husbeck must nevertheless demonstrate a sufficient reason for failing to raise his present claim in the context of his no-merit appeal. *See id.*, ¶56. Husbeck has not provided any reason, much less a sufficient reason, for not raising his claim in the earlier proceeding.

In his reply brief, Husbeck contends that the State forfeited its argument that Husbeck's claim is procedurally barred because it did not raise the argument in the circuit court. A respondent, however, is allowed to advance any argument that allows this court to sustain the circuit court's ruling. See *State v. Darcy N.K.*, 218 Wis. 2d 640, 651, 581 N.W.2d 567 (Ct. App. 1998). Moreover, this court may affirm on different grounds than those relied on by the circuit court. *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995).

Ultimately, this court engaged in an independent review of the record and concluded there was no arguable basis for withdrawing Husbeck's guilty plea or for challenging the circuit court's sentencing discretion. We also noted that all other nonjurisdictional defects and defenses had been waived by Husbeck's valid plea. Our discussion reflects that the no-merit review conducted by this court represented a full and conscientious examination of the record. Accordingly, our resolution of the no-merit proceeding carries a sufficient degree of confidence warranting application of the procedural bar to Husbeck's claim.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*