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DISTRICT IV

May 16, 2024

To:

Hon. John D. Hyland
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
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Sara Lynn Shaeffer
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Jack John Christopher Hamann, 554778
Fox Lake Correctional Institution
P.O. Box 147
Fox Lake, WI 53933

You are hereby notified that the Court has entered the following opinion and order:

2022AP858 State of Wisconsin v. Jack John Christopher Hamann (L.C. # 2017CF1046)

Before Kloppenburg, P.J., Blanchard, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jack John Christopher Hamann, *pro se*, appeals a circuit court order denying his motions for postconviction relief under WIS. STAT. § 974.06 (2021-22).[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

Hamann was convicted in 2018 of first-degree intentional homicide, following a jury trial. This court summarily affirmed Hamann's conviction on direct appeal. *See* ***State v. Jack***

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

John C. Hamann, No. 2019AP1040-CR, unpublished slip op. (WI App Dec. 17, 2020). In February 2022, Hamann filed a pro se postconviction motion in the circuit court pursuant to WIS. STAT. § 974.06, arguing that "trial counsel performed deficiently, resulting in prejudice that created an unfair trial." In March 2022, Hamann filed a second pro se postconviction motion under § 974.06, alleging ineffective assistance of both trial counsel and postconviction counsel. The circuit court denied both motions in a single decision without holding an evidentiary hearing. Hamann appeals.

We address each of Hamann's two WIS. STAT. § 974.06 motions in turn. In the first motion, Hamann alleged that his trial attorneys provided ineffective assistance related to their handling of a motion to dismiss, which the circuit court denied. Specifically, Hamann alleged that his trial attorneys did not consult with him about the motion to dismiss and that his attorneys "overlooked, forgot, or failed to communicate" certain facts to the judge. Hamann argued that he was entitled to a hearing on his claims of ineffective assistance of trial counsel. The circuit court concluded that all of these claims are procedurally barred under ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). As we now discuss, this court independently reaches the same conclusion.

Whether claims are procedurally barred by ***Escalona-Naranjo*** is a question of law that this court reviews de novo. *See* ***State v. Allen***, 2010 WI 89, ¶15, 328 Wis. 2d 1, 786 N.W.2d 124. "[I]f the defendant's grounds for relief have been finally adjudicated, waived or not raised in a prior postconviction motion, they may not become the basis for a [WIS. STAT. §] 974.06 motion," unless the defendant can demonstrate a sufficient reason why he did not previously raise those grounds for relief. ***Escalona-Naranjo***, 185 Wis. 2d at 181-82, 185. Whether a § 974.06 motion alleges a sufficient reason for failing to bring claims earlier is also a question of

law that this court reviews de novo. ***State v. Romero-Georgana***, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Hamann was represented by counsel on direct appeal. Hamann had the opportunity on direct appeal to raise the ineffective assistance of trial counsel claims that he later asserted in his first WIS. STAT. § 974.06 motion. He did not do so. In his first § 974.06 motion, Hamann does not provide any reason, much less a sufficient one, for failing to raise his ineffective assistance of trial counsel claims on direct appeal. Therefore, the claims contained in Hamann's first § 974.06 motion are procedurally barred. The circuit court properly denied Hamann's first § 974.06 motion on that basis.

Turning to Hamann's second WIS. STAT. § 974.06 postconviction motion, he alleged claims of ineffective assistance of both trial and postconviction counsel. According to Hamann, his trial attorneys rendered ineffective assistance by failing to object to certain evidence, failing to challenge the sufficiency of the evidence adduced at trial to support his conviction, failing to object to structural errors at jury selection and to "burden shifting" by the prosecution, failing to call witnesses who Hamann contends would have been beneficial to the defense, and failing to protect Hamann from self-incrimination. Hamann asserts that his postconviction counsel did not sufficiently review the record to identify these purported errors and for this reason failed to raise them in a postconviction motion or on direct appeal. Hamann asserts, in a conclusory manner, that his postconviction counsel was ineffective for failing to pursue multiple claims of ineffective assistance of trial counsel, and that postconviction counsel's ineffectiveness should be deemed a sufficient reason for failing to raise the claims on direct appeal. As with the first motion, the circuit court denied Hamann's second § 974.06 motion without a hearing. For the reasons we

now discuss, we affirm the circuit court's denial of Hamann's second § 974.06 postconviction motion.

To state a claim for ineffective assistance of counsel, the defendant must demonstrate: (1) that his counsel's performance was deficient; and (2) that the deficient performance was prejudicial. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Ineffective assistance of postconviction counsel may, under some circumstances, constitute a sufficient reason for not previously raising an issue. ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). However, a defendant is precluded from raising any claim, including an ineffective assistance claim, in a WIS. STAT. § 974.06 motion if that claim could have been brought on direct appeal, unless the defendant can demonstrate that the claim is "clearly stronger" than the claims appellate counsel actually presented. *See* ***Romero-Georgana***, 360 Wis. 2d 522, ¶¶4-5. This "clearly stronger" pleading standard is part of the deficient performance prong of the ***Strickland*** test. ***Romero-Georgana***, 360 Wis. 2d 522, ¶45. The defendant must allege sufficient facts to satisfy this standard within the § 974.06 motion itself. We "will not read into the § 974.06 motion allegations that are not within the four corners of the motion." ***Romero-Georgana***, 360 Wis. 2d 522, ¶64.

Hamann contends in his second WIS. STAT. § 974.06 motion that his postconviction counsel performed deficiently by failing to raise numerous arguments regarding his trial attorneys' alleged ineffectiveness. However, Hamann's § 974.06 motion fails to explain why we should conclude that his new claims for ineffective assistance of counsel are clearly stronger than the arguments that his postconviction/appellate attorney actually made in his direct appeal. Based on Hamann's failure to draw these mandatory comparisons within his second § 974.06 motion, we conclude that Hamann has not met the "clearly stronger" pleading requirement that is

necessary to avoid the procedural bar of ***Escalona-Naranjo***. *See* ***Romero-Georgana***, 360 Wis. 2d 522, ¶¶5-6. As a result, Hamann's second § 974.06 motion is procedurally barred and, accordingly, was properly denied by the circuit court.

Hamann also raises additional ineffective assistance of counsel arguments in his appellant's brief that were not argued in his two WIS. STAT. § 974.06 motions. These arguments were not raised in the circuit court; therefore, he may not raise them on appeal. *See* ***State v. Rogers***, 196 Wis. 2d 817, 826, 539 N.W.2d 897 (Ct. App. 1995) ("[A] party seeking reversal may not advance arguments on appeal which were not presented to the trial court.").

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals