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DISTRICT I

June 25, 2024

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

John Blimling
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Christopher Deshawn McGinnis 567115
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2023AP415

State of Wisconsin v. Christopher Deshawn McGinnis
L.C. # (2015CF921)

Before White, C.J., Donald, P.J., and Colón, J.

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).

Christopher DeShawn McGinnis, *pro se*, appeals an order that denied his motion for postconviction relief filed pursuant to WIS. STAT. § 974.06 (2021-22).¹ Because we conclude that McGinnis's claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), we affirm.

In 2015, a jury found McGinnis guilty of one count of first-degree intentional homicide by use of a dangerous weapon as a party to a crime, one count of first-degree recklessly

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

endangering safety by use of a dangerous weapon as a party to a crime, and one count of possessing a firearm while a felon. McGinnis filed an unsuccessful postconviction motion and then pursued an appeal, arguing that the circuit court erroneously admitted hearsay evidence and that his counsel was ineffective. We rejected his claims and affirmed his convictions. *See State v. McGinnis (McGinnis I)*, No. 2017AP2224-CR, unpublished slip op. (WI App Mar. 5, 2019).

McGinnis, *pro se*, then filed his first WIS. STAT. § 974.06 motion alleging multiple instances of ineffective assistance of trial counsel. McGinnis also argued that his postconviction counsel was ineffective for failing to raise those claims in his first postconviction motion. The circuit court denied the motion and this court affirmed. *See State v. McGinnis (McGinnis II)*, No. 2019AP2199-CR, unpublished slip op. and order (WI App Mar. 30, 2021).

McGinnis, *pro se*, then filed a second WIS. STAT. § 974.06 motion. McGinnis alleged four additional errors that took place at trial and argued that those errors constituted newly discovered evidence. Specifically, McGinnis alleged: (1) that the criminal complaint and amended information were defective; (2) police misconduct; (3) prosecutorial misconduct; and (4) ineffective assistance of both trial and appellate counsel. The circuit court denied the motion, finding that McGinnis was procedurally barred from raising those claims pursuant to *Escalona-Naranjo*. This appeal follows.

After the time for a direct appeal has passed, WIS. STAT. § 974.06 permits defendants to mount collateral attacks on their convictions based on alleged jurisdictional or constitutional errors. *See State v. Henley*, 2010 WI 97, ¶¶50, 52, 328 Wis. 2d 544, 787 N.W.2d 350. There is, however, a limitation. A defendant who has pursued a postconviction motion or a direct appeal may not seek collateral review of an issue that was or could have been raised in the earlier

proceeding unless the defendant can show a sufficient reason for failing to raise the issue earlier. See *Escalona-Naranjo*, 185 Wis. 2d at 185. In some instances, ineffective assistance of counsel may constitute a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal. *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. However, a defendant who acts as his own attorney may not later claim that he received ineffective assistance of counsel from himself. See *Faretta v. California*, 422 U.S. 806, 834 n.46 (1975).

Here, McGinnis asserted four alleged errors, claiming that they all constituted newly discovered evidence. However, as the circuit court correctly found, McGinnis's motion failed to explain or otherwise discuss the newly- discovered-evidence standard. Aside from McGinnis's claim of ineffective assistance of appellate counsel, McGinnis's motion does not suggest that any of his arguments were based on recently uncovered facts. Indeed, McGinnis's claims relating to the criminal complaint, prosecutorial misconduct, and police misconduct, seem to be based on transcripts and other documents from his trial, all of which were available when McGinnis filed his first WIS. STAT. § 974.06 motion. McGinnis has failed to allege a sufficient reason as to why his claims were not previously raised, particularly when he brought his first WIS. STAT. § 974.06 motion himself.

Along those same lines, we reject McGinnis's claim that his appellate counsel was ineffective for failing to investigate issues relating to the criminal complaint and various forms of misconduct when pursuing McGinnis's direct appeal. McGinnis has not alleged a sufficient reason as to why he failed to raise ineffective assistance of appellate counsel in his first WIS. STAT. § 974.06 motion, which, as we remind McGinnis, he filed himself. To the extent McGinnis argues that his postconviction counsel was ineffective for failing to raise ineffective

assistance of appellate counsel in his first § 974.06 motion, McGinnis acted as his own counsel at that time and cannot allege ineffective assistance against himself. *See Faretta*, 422 U.S. at 834 n.46.

Upon the foregoing, therefore.

IT IS ORDERED that the judgment 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