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**DISTRICT II**

July 17, 2024

To:

Hon. Laura J. Lavey  
Circuit Court Judge  
Electronic Notice

Anne Christenson Murphy  
Electronic Notice

Michelle Weber  
Clerk of Circuit Court  
Fond du Lac County Courthouse  
Electronic Notice

Alfredo Rios Jaimes, #438746  
Redgranite Correctional Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

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

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2023AP1466

State of Wisconsin v. Alfredo Rios Jaimes (L.C. #2016CF646)

Before Gundrum, P.J., Neubauer and Grogan, 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).**

Alfredo Rios Jaimes, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2021-22)<sup>1</sup> postconviction motion. In that motion, he sought to withdraw his plea, alleging ineffective assistance by both his trial counsel and postconviction counsel for failing to raise an alleged *Miranda*<sup>2</sup> violation and that postconviction counsel was also ineffective for failing to file a postconviction motion for plea withdrawal. The circuit court denied the motion on the grounds that Jaimes' motion was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168,

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

<sup>2</sup> *Miranda v. Arizona*, 384 U.S. 436 (1966).

517 N.W.2d 157 (1994). 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 affirm.

In 2016, the State charged Jaimes with multiple counts of child sexual assault as a repeater. Jaimes' primary language is Spanish, although he does speak some English.<sup>3</sup> Jaimes expressed concern to the circuit court about wanting a Spanish-speaking lawyer, but ultimately agreed to continue with his appointed lawyer when the court indicated he could have an interpreter present when meeting with his lawyer. It is undisputed that Jaimes had an interpreter at every court hearing. Jaimes' lawyer filed three suppression motions, but Jaimes ultimately accepted the State's plea bargain instead of proceeding with the scheduled suppression hearing.

At the plea hearing, Jaimes agreed he had read the Spanish plea questionnaire form,<sup>4</sup> he was able to understand the form, and he was making his no-contest pleas freely and voluntarily. After conducting the plea colloquy, the circuit court accepted Jaimes' pleas. Before sentencing, Jaimes wrote a letter to the court requesting to withdraw his pleas and asking for a new lawyer, alleging his current lawyer had "threatened" him into entering his pleas.<sup>5</sup> The court granted his request for a new lawyer, and the public defender's office appointed new counsel. His new counsel filed a presentence plea withdrawal motion, which the court denied after holding an evidentiary hearing where it heard testimony from Jaimes, his trial counsel, and a police officer who had interviewed Jaimes in English in an unrelated matter. Based on that testimony, the

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<sup>3</sup> This court notes that Jaimes' pro se appellate briefs are written in English.

<sup>4</sup> The plea questionnaire form advised Jaimes in both English and Spanish.

<sup>5</sup> This letter was handwritten in English and signed by Jaimes.

court found that Jaimes' testimony was not credible and that Jaimes' claim about his "Spanish-English language problem" was neither "supported by the facts nor evidence[.]"

The circuit court sentenced Jaimes in 2018, and in 2019, his postconviction counsel filed a no-merit report in Jaimes' direct appeal. This court affirmed Jaimes' convictions, stating that "Jaimes received a copy of the report, was advised of his right to file a response, and has elected not to do so." We considered the "potential issues" raised in the no-merit report, including whether his pleas were entered properly, whether the circuit court erred in denying his plea withdrawal motion, whether he received ineffective assistance of counsel, and whether the sentence he received was erroneous. We also independently reviewed the entire Record and concluded that it "disclos[ed] no other potential issues for appeal."

Three-and-one-half years after our decision, Jaimes filed a pro se WIS. STAT. § 974.06 postconviction motion seeking plea withdrawal on the basis of ineffective assistance of both trial and postconviction counsel. The circuit court denied the motion without holding a hearing on the ground that his claims were procedurally barred. The court noted in its written order that Jaimes' claims were all "conclusory allegations" that did not provide a sufficient reason to avoid the procedural bar and that Jaimes could have raised these claims in response to the no-merit report, but did not. Jaimes appeals.

WISCONSIN STAT. § 974.06(4) bars a defendant from bringing postconviction claims, including constitutional claims, that could have been raised in a previous postconviction motion or on direct appeal unless the defendant has a "sufficient reason" for failing to do so. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. A claim brought under § 974.06 is also barred if it has been finally adjudicated during a previous appeal. *See id.*; *Escalona-Naranjo*, 185 Wis. 2d

at 181-82. These rules exist to promote “finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Whether any of Jaimes’ claims brought pursuant to WIS. STAT. § 974.06 are barred by the application of *Escalona-Naranjo* presents a question of law that we review de novo. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Jaimes’ first appeal in 2019 proceeded under our no-merit procedures. *See* WIS. STAT. RULE 809.32. The *Escalona-Naranjo* procedural bar applies to no-merit appeals as long as the proper no-merit procedures were followed and those procedures warrant confidence in the outcome. *State v. Tillman*, 2005 WI App 71, ¶¶2, 19-20, 281 Wis. 2d 157, 696 N.W.2d 574 (extending procedural bar to no-merit appeals); *State v. Allen*, 2010 WI 89, ¶62, 328 Wis. 2d 1, 786 N.W.2d 124 (explaining that if the court of appeals follows the no-merit protocol, the defendant receives review of issues whether or not they were expressly raised).

Jaimes did not allege in his WIS. STAT. § 974.06 motion that the no-merit procedure was not followed in his first appeal, but even if he had, the Record conclusively demonstrates that the no-merit procedure was properly followed. Moreover, the challenges Jaimes asserts here were largely rejected in the no-merit opinion in which we reviewed and rejected “potential issues of whether Rios Jaimes’ pleas were validly entered, whether the circuit court properly denied his presentencing motion to withdraw them, whether Rios Jaimes is entitled to plea withdrawal due to ineffective assistance of counsel, and whether the circuit court properly imposed its sentence.”

As the circuit court noted, Jaimes did not respond to the no-merit report despite being advised that he had the right to do so. Had he done so, Jaimes could have raised the claims he now raises in his WIS. STAT. § 974.06 motion. Jaimes contends that his failure to file a response was because he could not read the no-merit report sent to him because it was in English. This, however, does not excuse his failure to respond at all. Jaimes could have asked his attorney for a copy in Spanish or told this court that he would like to respond but could not because the report was in English. Moreover, despite his assertion, the Record reflects that Jaimes is capable of writing a letter to the court as that is what prompted his presentence change of counsel and plea withdrawal motion.

Further, the circuit court held a hearing on Jaimes' presentence plea withdrawal motion and concluded there was no legal basis to grant Jaimes' request to withdraw his plea. The court found "as fact that the defendant is capable of having a conversation in English. His testimony to the contrary is flat out implausible, not credible, and undermines his credibility in all his statements today." After hearing Jaimes' testimony and testimony from his trial counsel, the court found Jaimes' allegations to be false and not credible. The court rejected Jaimes' contention that the Spanish-English language barrier interfered with his ability to enter a valid plea, and it also rejected Jaimes' claim that he was pressured or coerced into entering his plea, instead finding that Jaimes knowingly, intelligently, and voluntarily made the difficult choice to plead no contest instead of risking the much longer sentence that could have been imposed had he proceeded to trial and been found guilty. We are bound by the court's credibility assessments, which we affirmed in the no-merit appeal.

Jaimes also claims he should be able to avoid the *Escalona-Naranjo* bar because his postconviction counsel failed to raise claims related to suppressing his statements for an alleged

*Miranda* violation. That postconviction counsel did not do so is of little import here, however, because the Record reflects that trial counsel filed multiple suppression motions, including a motion to suppress all statements “made by the defendant to any law enforcement officer” because “these statements were taken in violation of the rights guaranteed to the defendant by ... the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution[.]” There was simply no reason for postconviction counsel to make this argument based on something that Jaimes’ trial counsel had already done. Moreover, and in any event, Jaimes chose to plead no contest before resolving the suppression motions and therefore waived any *Miranda* challenge. See *State v. Multaler*, 2002 WI 35, ¶54, 252 Wis. 2d 54, 643 N.W.2d 437 (“no contest plea generally waives all nonjurisdictional defects, including constitutional claims”); *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (same).

Because the claims Jaimes raises here either were raised or could have been raised in his direct appeal, the circuit court correctly denied Jaimes’ motion as procedurally barred.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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*