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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 1, 2024

To:

Hon. Ellen R. Brostrom
Circuit Court Judge
Electronic Notice

Michael C. Sanders
Electronic Notice

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

Howard Emmanuel Brown 568093
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:

2023AP704

State of Wisconsin v. Howard Emmanuel Brown
(L.C. # 2010CF3654)

Before Donald, P.J., Geenen and Colón, 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).

Howard Emmanuel Brown, *pro se*, appeals an order that denied his motion seeking postconviction relief pursuant to WIS. STAT. § 974.06 (2021-22).¹ The circuit court determined that his claims were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

In 2010, Brown pled guilty to first-degree reckless homicide as a party to a crime. The circuit court imposed a twenty-eight-year term of imprisonment. Represented by postconviction counsel, Brown sought postconviction relief, alleging that his trial counsel was ineffective during plea negotiations. The circuit court denied the postconviction motion. Brown, by counsel, pursued a direct appeal. We affirmed. *State v. Brown (Brown I)*, No. 2011AP2412-CR, unpublished slip op. (WI App July 31, 2012).

In 2019, Brown filed a postconviction motion on his own behalf. He sought sentence modification based on alleged new factors and on an alleged erroneous exercise of sentencing discretion. Alternatively, he sought resentencing because, he alleged, the sentencing court violated his constitutional right to due process by relying on inaccurate information. The circuit court denied the postconviction motion. Brown appealed. We affirmed. *State v. Brown (Brown II)*, No. 2019AP1006-CR, unpublished op. and order (WI App Mar. 16, 2021).

In 2023, again *pro se*, Brown filed the postconviction motion underlying this appeal. He alleged that he pled guilty in this matter without first receiving an explanation of the elements of the crime. Brown therefore sought to withdraw his guilty plea on the grounds that it violated the constitutional requirement that a guilty plea be entered knowingly, intelligently, and voluntarily. See *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). Brown further asserted that the postconviction and appellate attorney who represented him in the proceedings underlying *Brown I* was ineffective for failing to pursue plea withdrawal on these grounds. The circuit court denied the postconviction motion. Brown appeals.

WISCONSIN STAT. § 974.06 permits an incarcerated person to raise constitutional claims after the time for a direct appeal has passed. *State v. Henley*, 2010 WI 97, ¶¶52-53, 328 Wis. 2d

544, 787 N.W.2d 350. However, the opportunity to bring claims under § 974.06 is limited because “[w]e need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. A defendant therefore may not bring postconviction claims under § 974.06 if the defendant could have raised the claims in a previous postconviction motion or on direct appeal unless the defendant states a “sufficient reason” for failing to raise the issues earlier. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Whether a defendant’s second or subsequent postconviction motion included a sufficient reason to avoid the procedural bar imposed by § 974.06 and *Escalona-Naranjo* is a question of law that we review *de novo*. *State v. Kletzien*, 2011 WI App 22, ¶16, 331 Wis. 2d 640, 794 N.W.2d 920.

Brown suggested in his most recent postconviction motion that he failed to raise his current claim in earlier proceedings due to ineffective assistance by the attorney who represented him in *Brown I*. Under some circumstances, ineffective assistance by a defendant’s postconviction counsel may constitute a sufficient reason for permitting an additional postconviction motion under WIS. STAT. § 974.06. *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. Postconviction counsel’s alleged ineffectiveness, however, does not provide a basis for filing a series of postconviction motions. Here, postconviction counsel’s alleged ineffectiveness in the proceedings underlying *Brown I* does not explain Brown’s own failure to present all of his claims in the postconviction motion underlying *Brown II*. Therefore, Brown’s allegation that his postconviction and appellate counsel was ineffective is not a sufficient reason to permit Brown’s second *pro se* motion for postconviction relief. For all the foregoing reasons, we affirm.

IT IS ORDERED that the circuit court order 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