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DISTRICT IV

October 3, 2024

To:

Hon. Michael A. Haakenson
Circuit Court Judge
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

Amanda Nelson
Clerk of Circuit Court
Rock County Courthouse
Electronic Notice

Thomas Lane Seeley 182829
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Redgranite, WI 54970-0925

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

2023AP1084

State of Wisconsin v. Thomas Lane Seeley (L.C. # 1994CF550B)

Before Kloppenburg, P.J., Nashold, and Taylor, 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).

Thomas Seeley, pro se, appeals a circuit court order denying his postconviction motion under WIS. STAT. § 974.06 (2021-22).¹ Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm.

In 1995, Seeley was convicted of first-degree intentional homicide with use of a dangerous weapon. He appealed, and this court upheld his conviction. *See State v. Seeley*, 212

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

Wis. 2d 75, 78, 567 N.W.2d 897 (Ct. App. 1997). Twenty years later, Seeley filed a pro se postconviction motion under WIS. STAT. § 974.06. The circuit court denied the motion, and this court affirmed. See *State v. Seeley*, No. 2017AP2129, unpublished op. and order (WI App Oct. 3, 2018).

Seeley then filed a second pro se postconviction motion under WIS. STAT. § 974.06. He raised multiple claims, including claims that counsel was ineffective by failing to challenge certain parts of the jury instructions. The circuit court denied the motion.

On appeal, Seeley argues that the circuit court erred by concluding that his claims relating to the jury instructions are procedurally barred. We affirm because we agree with the circuit court that the claims are procedurally barred.

Under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), “claims that could have been raised on direct appeal or in a previous [WIS. STAT.] § 974.06 motion are barred from being raised in a subsequent § 974.06 postconviction motion absent a showing of a sufficient reason for why the claims were not raised on direct appeal or in a previous § 974.06 motion.” *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Whether a claim is procedurally barred by *Escalona-Naranjo* is a question of law that we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶9, 331 Wis. 2d 640, 794 N.W.2d 920. Here, we conclude that Seeley’s claims relating to the jury instructions are procedurally barred under *Escalona-Naranjo* because Seeley could have raised those claims in his previous § 974.06 motion, and he has not shown a sufficient reason for failing to raise the claims in that motion.

Seeley argues that he could not have raised his claims relating to the jury instructions in his previous WIS. STAT. § 974.06 motion because he only recently discovered that the jury

instructions are confusing. However, as the State contends, Seeley's alleged ignorance of the claims until now is not a sufficient reason for failing to raise them in his previous § 974.06 motion. "The statute's strictures are not ignored or relaxed for pro se litigants" *State ex rel. Wren v. Richardson*, 2019 WI 110, ¶27, 389 Wis. 2d 516, 936 N.W.2d 587. Thus, even though pro se litigants "are almost uniformly untrained in the law," courts "expect them to exercise reasonable diligence to learn all potentially meritorious claims and to raise them in their first § 974.06 motion." *Id.* "If they don't, the claim is procedurally barred" *Id.*

Next, Seeley argues that postconviction counsel was ineffective and that counsel's ineffectiveness is a sufficient reason for failing to raise his claims relating to the jury instructions previously. This argument is not persuasive because postconviction counsel's alleged ineffectiveness does not excuse Seeley's failure to raise the claims in his previous pro se WIS. STAT. § 974.06 motion. At most, it could provide a sufficient reason for his failure to raise those claims in his direct appeal.

Moreover, as the State contends, Seeley's reliance on postconviction counsel's alleged ineffectiveness fails because Seeley has not established that his claims relating to the jury instructions are "clearly stronger" than the claims that postconviction counsel raised in Seeley's direct appeal. "[A] defendant who alleges in a [WIS. STAT.] § 974.06 motion that his postconviction counsel was ineffective for failing to bring certain viable claims must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought." *State v. Romero-Georgana*, 2014 WI 83, ¶4, 360 Wis. 2d 522, 849 N.W.2d 668.

Therefore,

IT IS ORDERED that the circuit court's order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals