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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 II

October 5, 2016

To:

Hon. Eugene A. Gasiorkiewicz
Circuit Court Judge
730 Wisconsin Avenue
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

W. Richard Chiapete
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Scott E. Rosenow
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

John David Ohlinger, #2678
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2015AP237 State of Wisconsin v. John David Ohlinger (L.C. #2002CF224)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

John D. Ohlinger appeals pro se from an order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2013-14).[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. We agree with the circuit court that Ohlinger's claims are procedurally barred under ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Ohlinger was arrested at a truck stop after arranging to meet a "mother" and her "twelve-year-old daughter"—two undercover police officers—for sex. After a 2006 bench trial, he was convicted of child enticement—sexual contact, and attempted first-degree sexual assault of a child. The court sentenced him to life imprisonment on the enticement count and forty years' initial confinement and twenty years' extended supervision on the attempted sexual-assault count, concurrent to the life sentence and consecutive to a thirty-year federal sentence and to an unrelated eight-year state sentence.

Between 2007 and 2011, Ohlinger filed a WIS. STAT. RULE 809.30(2)(h) postconviction motion, a direct appeal, a pro se ***Knight***[2] petition, and a pro se WIS. STAT. § 974.06 postconviction motion. All were denied. The 2011 § 974.06 motion was denied as procedurally barred under ***Escalona-Naranjo***. This court summarily affirmed on the same basis.

In 2014, Ohlinger filed the pro se WIS. STAT. § 974.06 motion at issue here. The circuit court noted that Ohlinger based his motion on several issues already "made and ruled upon" and thus concluded they were barred.

The court specifically noted that Ohlinger's challenge to subject-matter jurisdiction based on what he perceived to be a conflict between state and federal law about "the capturing of electronic communications and yet another claim of ineffective assistance of counsel" had been litigated. Nonetheless, the court chose to address the issue on the merits to "put it to rest." It concluded there was "absolutely no dispute" that the circuit court had subject-matter jurisdiction

[2] *See* ***State v. Knight***, 168 Wis. 2d 509, 484 N.W.2d 540 (1992).

and advised Ohlinger that he must realize "that his appellate ship has run aground," and that he no longer could "restate or revisit previously ruled upon grievances." Ohlinger appeals.[3]

A defendant must raise "[a]ll grounds for relief available … under [WIS. STAT. § 974.06] … in his or her original, supplemental or amended motion." Sec. 974.06(4). "Any ground finally adjudicated or not so raised … may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion." ***Id.*** An argument is finally adjudicated even if a court dismisses a postconviction motion on procedural grounds rather than reaching the merits. *See* ***State v. Braun***, 185 Wis. 2d 152, 167, 516 N.W.2d 740 (1994). Due process permits a convicted defendant "a single appeal of that conviction and a single opportunity to raise claims of error." ***State ex rel. Macemon v. Christie***, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Absent a showing of a sufficient reason, "claims of error that could have been raised on direct appeal or in a previous § 974.06 motion are barred from being raised in a subsequent § 974.06 motion." ***State v. Lo***, 2003 WI 107, ¶15, 264 Wis. 2d 1, 665 N.W.2d 756; ***Escalona-Naranjo***, 185 Wis. 2d at 185.

Ohlinger argues that the circuit court lacked both subject-matter and territorial jurisdiction, that there was insufficient evidence of his guilt at trial, and that he received ineffective assistance of "pretrial, trial, and post-conviction/appellate counsels." His "sufficient reason" is that, for some period of time, he did not have a complete circuit court record. He

[3] Ohlinger's reply brief is over twenty pages of single-spaced, margin-to-margin, minute printing. As it does not conform to WIS. STAT. RULE 809.19(8)(c), we disregard it. *See* WIS. STAT. RULE 809.83(2).

seeks remand to the circuit court for it to explain with greater particularity the denial of his postconviction motion. He also argues the ***Escalona-Naranjo*** procedural bar should not apply to him because he is pro se, indigent, and only eighth-grade educated, and because the "sufficient reason" requirement in WIS. STAT. § 974.06(4) is unconstitutionally vague.

To the extent Ohlinger did not raise these claims before his latest WIS. STAT. § 974.06 motion, he knew of them and could have. To the extent he previously did raise them, they may not be subsequently relitigated no matter how artfully rephrased. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Successive, reformulated claims "clog the court system and waste judicial resources." ***State ex rel. Macemon***, 216 Wis. 2d at 343. ***Escalona-Naranjo*** erects a sensible bar. Ohlinger has had enough kicks at the cat.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals