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DISTRICT III

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

2015AP1569

State of Wisconsin v. Teng Vang (L.C. # 2004CF268)

Before Stark, P.J., Hruz and Seidl, JJ.

Teng Vang appeals an order denying his WIS. STAT. § 974.06 (2013-14)¹ postconviction motion without a hearing. Upon our review of the record and the parties' briefs, we conclude at conference that the order should be summarily affirmed because Vang's motion was procedurally barred.

In 2006, a jury convicted Vang of attempted first-degree intentional homicide and three counts of first-degree recklessly endangering safety, both as a party to a crime, and one count of

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

being a felon in possession of a firearm. In 2007, Vang's postconviction counsel filed a no-merit report. Vang filed a response to the report. This court considered the no-merit report and Vang's response, independently reviewed the record, and concluded there was no arguable basis for appeal. In 2015, Vang filed the present postconviction motion arguing the party-to-a-crime statute is unconstitutional, his appellate attorney was ineffective for failing to raise that issue, and he is entitled to a new trial in the interest of justice. The circuit court denied the motion without a hearing, concluding the motion did not raise any question of fact and Vang's arguments lacked legal support.

A circuit court may deny a postconviction motion without a hearing if the motion fails to raise questions of fact or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. *State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433. All claims of error that a criminal defendant can bring should be consolidated into one motion or appeal. *State v. Lo*, 2003 WI 103, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Because Vang had a previous postconviction proceeding, he was required in his motion to establish "sufficient reason" for his failure to have raised the issues in the earlier proceedings. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). The procedural bar against successive postconviction proceedings applies regardless of whether the earlier proceeding resulted in a no-merit report. *Allen*, 274 Wis. 2d 568, ¶4. Whether the issue is procedurally barred is a question of law that we decide without deference to the circuit court. *Id.*, ¶9. We affirm the circuit court if it reached the correct result, even if this court employs a different reasoning. *State v. Thames*, 2005 WI App 101, ¶10, 281 Wis. 2d 772, 700 N.W.2d 285.

Vang's motion offered no explanation, much less a "sufficient reason," for his failure to have raised the present issues in his response to the no-merit report. Therefore, the motion was procedurally barred. *Allen*, 274 Wis. 2d 568, ¶4. Vang's motion fails to acknowledge his response to the no-merit report and focuses only on his allegation that his appellate counsel was ineffective for failing to raise the constitutional issue. Even that explanation is insufficient because Vang fails to establish the issues he now raises are clearly stronger than those presented by his appellate counsel. See *State v. Starks*, 2013 WI 69, ¶57, 349 Wis. 2d 274, 833 N.W.2d 146. He also fails to establish that the no-merit procedure was not followed. See *State v. Fortier*, 2006 WI App 11, ¶27, 289 Wis. 2d 179, 709 N.W.2d 893. Vang's no-merit counsel and this court considered whether there was any issue of arguable merit, and concluded there was none. Vang has not established that his present constitutional challenge to the party-to-a-crime statute is clearly stronger than the issues considered and rejected by his no-merit counsel and this court.

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

Diane M. Fremgen
Clerk of Court of Appeals