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DISTRICT I

February 21, 2017

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

2016AP786

State of Wisconsin v. Devan N. Brooks (L.C. # 1998CF3473)

Before Brennan, P.J., Kessler and Brash, JJ.

Devan N. Brooks appeals an order denying his collateral postconviction motion brought pursuant to WIS. STAT. § 974.06 (2015-16).¹ Brooks argues that he is entitled to resentencing based on inaccurate information. He also argues that his claim should not be procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). After reviewing the

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Brooks was convicted of armed robbery on December 8, 1998. On direct appeal, his appointed appellate counsel filed a no-merit report. Brooks responded, raising four issues. After conducting an independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), we affirmed the judgment of conviction on April 19, 2000. Over the subsequent years, Brooks filed several postconviction motions arguing that he was sentenced on the basis of inaccurate information, all of which were denied. Most recently, he filed a postconviction motion on March 4, 2016, again arguing that he was sentenced on the basis of inaccurate information. The circuit court concluded that the motion was procedurally barred by *Escalona-Naranjo*, 185 Wis. 2d at 185.

A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion,” unless the defendant demonstrates a sufficient reason for failing to raise the issue previously. *Id.* “Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation [that provides postconviction remedies].” *Id.* Moreover, this procedural bar may be applied where, as here, a prior appeal was processed under the no-merit procedure. *State v. Tillman*, 2005 WI App 71, ¶27, 281 Wis. 2d 157, 696 N.W.2d 574 (“a prior no merit appeal may serve as a procedural bar to a subsequent postconviction motion and ensuing appeal which raises the same issues or other issues that could have been previously raised”).

On direct appeal, Brooks responded to the no-merit report and raised four issues, but did not argue that he had been sentenced based on inaccurate information. By failing to raise the

issue in his response, Brooks waived his right to litigate the issue absent a sufficient reason for his failure, which he has not provided. Therefore, his claim is procedurally barred. *See Escalona-Naranjo*, 185 Wis. 2d at 185; *Tillman*, 281 Wis. 2d 157, ¶27.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals