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**DISTRICT IV**

April 28, 2017

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

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2016AP1351

State of Wisconsin v. Lawrence T. Davis (L.C. # 2011CF147)

Before Lundsten, Sherman, and Blanchard, JJ.

Lawrence Davis, pro se, appeals a circuit court order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2015-16).<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm.

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

Davis was convicted, following a jury trial, of one count of armed robbery, one count of armed burglary, and nine counts of false imprisonment. He was sentenced to a total of twelve years of initial confinement and five years of extended supervision. Davis represented himself in postconviction proceedings and on appeal, after he was twice appointed Michael Covey as postconviction counsel and twice requested that Covey withdraw. On direct appeal, we affirmed Davis's conviction and the circuit court's denial of his first motion for postconviction relief. Davis petitioned the supreme court for review, and his petition was denied.

Davis then filed a second pro se postconviction motion in the circuit court, arguing that Covey provided ineffective assistance of postconviction counsel. Davis also raised a sufficiency of the evidence claim and a confrontation claim. The circuit court rejected Davis's ineffective assistance of counsel argument, concluding that Davis had waived his right to counsel and elected to proceed pro se after being "cautioned on multiple occasions" that he was not entitled to choose his own appointed counsel. The circuit court denied Davis's other claims as procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Davis now appeals.

We turn first to Davis's claim of ineffective assistance of postconviction counsel. In our opinion affirming Davis's conviction on direct appeal, we considered and rejected Davis's argument that he was improperly denied the right to postconviction counsel. We noted that the circuit court granted Covey's second motion to withdraw after finding that Davis's waiver of counsel was knowing, intelligent, and voluntary, and that Davis was competent to represent himself. The circuit court made these findings after conducting a full evidentiary hearing. Having waived his right to counsel, Davis cannot now argue ineffective assistance of that counsel as the basis for a subsequent postconviction motion. A ground for relief that was

knowingly, voluntarily, and intelligently waived in one proceeding cannot be the basis for a subsequent motion under WIS. STAT. § 974.06, absent a sufficient reason. *See* § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 181. To the extent that Davis attempts to argue ineffective assistance of postconviction counsel as his “sufficient reason,” that argument fails because, once Davis made a valid waiver of the right to postconviction counsel, it was his responsibility to raise and preserve all issues he wished to pursue in postconviction proceedings and on appeal.

Davis also is procedurally barred from raising his sufficiency of the evidence claim and his confrontation claim. Davis argued on direct appeal that the evidence was insufficient to support his conviction. We rejected that argument, and Davis may not raise it again now. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”). Davis also has not provided a sufficient reason for not previously raising his confrontation claim. Absent a sufficient reason for failing to raise the claim, he cannot escape the procedural bar. As succinctly stated by our supreme court in *Escalona-Naranjo*, “[w]e need finality in our litigation.” 185 Wis. 2d at 185. We conclude, as did the circuit court, that Davis is subject to the procedural bar of *Escalona-Naranjo* and its progeny.

IT IS ORDERED that the 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 and may not be cited under WIS. STAT. RULE 809.23(3)(b).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*