



OFFICE OF THE CLERK  
**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](http://www.wicourts.gov)

**DISTRICT IV**

April 28, 2017

To:

Hon. C. William Foust  
Circuit Court Judge  
215 S. Hamilton, Br. 14, Rm. 7109  
Madison, WI 53703

Christine A. Remington  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Carlo Esqueda  
Clerk of Circuit Court  
215 S. Hamilton, Rm. 1000  
Madison, WI 53703

Thomas C. Hiller  
Coleman USP - 1  
P.O. Box 1033  
Coleman, FL 33521

Ismael R. Ozanne  
District Attorney  
Rm. 3000  
215 South Hamilton  
Madison, WI 53703

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

---

2016AP367

State of Wisconsin v. Thomas C. Hiller (L.C. # 1998CF1923)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Thomas Hiller appeals an order denying his motion for postconviction relief that was filed 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 affirm.

---

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

The State argues that Hiller's motion was properly denied because he previously filed another motion under that section, and has not given a sufficient reason for not raising the current grounds in the earlier motion. Therefore, the State argues, the current motion is barred by WIS. STAT. § 974.06(4), as interpreted by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

The State omits to mention that the document it describes as an earlier postconviction motion was actually a letter that did not cite WIS. STAT. § 974.06 or otherwise refer to itself as a motion. In reply, Hiller argues that his letter was not a postconviction motion, and simply asked the trial court how the court could have sentenced him, given certain facts relating to an earlier case in which he was found not guilty by reason of mental disease or defect. Hiller asserts that this letter showed "a mentally ill, criminally insane psychopath, requesting a response from the Court, and there was no effort to set aside the Judgment at that time."

By failing to acknowledge that Hiller's earlier submission was actually a letter, the State has failed to develop any argument explaining why the letter should be viewed now as a postconviction motion. While it is true that the circuit court here construed the letter as a request to withdraw his plea, we question whether that fact is enough, by itself, to activate the procedural bar of WIS. STAT. § 974.06(4). We are skeptical because there is always the possibility that a court's interpretation was unreasonable or contrary to what appeared to be the defendant's actual intent. Depending on the content of a submission, if a defendant submits something to a court without intending to ask for relief, it might be unreasonable to conclude that such a submission activates the bar against filing a postconviction motion later.

However, we also recognize that a document's format as a letter, rather than a motion, cannot by itself be enough to *prevent* the procedural bar from being activated. A defendant cannot evade the bar by formatting multiple requests for relief in letter form.

Accordingly, some middle ground must exist in which we look at the defendant's earlier submission to evaluate whether it can reasonably be construed as a prior postconviction motion. Therefore, if it appears from the defendant's letter that the defendant was intending to ask the court for relief of the type that might properly be granted under WIS. STAT. § 974.06, we will conclude that the bar is activated by that submission.

In this case, we disagree with Hiller's argument that he was only asking the court a question, and not attempting to set aside the judgment. After providing a description of the facts about his earlier, and allegedly undischarged, commitment, Hiller stated: "I feel that my life sentence should be vacated or overy [sic] turned." Later, Hiller stated: "All I want is what is fair, a new trial—or just leave me in Mendota for the rest of my life." The final sentence was: "I hope you can help me sir."

Although Hiller's letter never directly asked the court to vacate his conviction or take other action, we conclude that it was reasonable for the circuit court to have construed this as a request to withdraw his plea. Plea withdrawal would be the proper legal device to vacate the sentence and potentially lead to a trial or commitment at Mendota. The above statements make it clear that Hiller's intent was to ask the court to help him achieve one of those results. And, Hiller's underlying theory for plea withdrawal, which is that he did not understand the plea, is one properly raised under WIS. STAT. § 974.06.

Accordingly, for Hiller to be able to file a new postconviction motion now, he must show a sufficient reason for not raising the current grounds for relief in his earlier letter. Hiller has not argued that such a reason exists. Therefore, Hiller's motion was properly denied.

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

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).

---

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