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**DISTRICT I**

December 8, 2017

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

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2016AP1291

State of Wisconsin v. David D. Ramage (L.C. # 2006CF4808)

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

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

David D. Ramage, *pro se*, appeals an order denying his motion for postconviction relief brought under WIS. STAT. § 974.06 (2015-16).<sup>1</sup> He also appeals the order denying his motion for reconsideration. The circuit court determined that his claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and *State v. Tillman*, 2005 WI

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

App 71, 281 Wis. 2d 157, 696 N.W.2d 574. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. See WIS. STAT. RULE 809.21. We summarily affirm.

In 2006, Ramage entered a no-contest plea to one count of solicitation to commit first-degree intentional homicide. The circuit court imposed a determinate prison sentence of twelve years and six months. Ramage pursued a direct appeal under the no-merit procedures set forth in WIS. STAT. RULE 809.32. We affirmed. See *State v. Ramage (Ramage I)*, No. 2007AP2355-CRNM, unpublished op. and order (WI App May 19, 2008).

On July 10, 2008, November 24, 2009, February 3, 2011, February 12, 2013, and December 23, 2015, Ramage filed postconviction motions *pro se* challenging his conviction pursuant to WIS. STAT. § 974.06. The circuit court denied each motion, and Ramage did not appeal. Additionally, in May 2011, Ramage filed a motion for sentence credit under WIS. STAT. § 973.155. The circuit court denied relief, and we affirmed. See *State v. Ramage (Ramage II)*, 2011AP1838/1839-CR, unpublished slip op. (WI App Dec. 11, 2012).

On March 22, 2016, Ramage filed the postconviction motion underlying this appeal. He alleged that his trial counsel was constitutionally ineffective, warranting plea withdrawal. The circuit court denied relief and then denied reconsideration. Ramage appeals.

“We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, although WIS. STAT. § 974.06(1) permits prisoners to raise postconviction claims of constitutional dimension after the time for a direct appeal has passed, the statute contains a limitation. Pursuant to § 974.06(4), a prisoner who wishes to pursue a second or subsequent postconviction motion must demonstrate a sufficient reason for failing in the previous

postconviction proceeding to raise or adequately address the issues. *See Escalona-Naranjo*, 185 Wis. 2d at 184-85.

“A no-merit appeal clearly qualifies as a previous motion under [WIS. STAT.] § 974.06(4).” *State v. Allen*, 2010 WI 89, ¶41, 328 Wis. 2d 1, 786 N.W.2d 124. Accordingly:

when a defendant’s postconviction issues have been addressed by the no merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously.

*Tillman*, 281 Wis. 2d 157, ¶19. Before we apply the foregoing rule to a § 974.06 motion filed after a no-merit appeal, however, we “consider whether the no-merit procedures (1) were followed; and (2) warrant sufficient confidence to apply the procedural bar.” *See Allen*, 328 Wis. 2d 1, ¶62.

We have considered the procedures followed in *Ramage I*. There, appellate counsel filed a no-merit report, Ramage responded, and, at our request, appellate counsel filed a supplemental no-merit report. *See id.* at 1-2. Our opinion in *Ramage I* reflects that we considered the no-merit reports and Ramage’s submission, and we independently examined the record. *See id.* In affirming the conviction, we expressly considered Ramage’s allegations that his trial counsel was ineffective, the plea lacked a factual basis, and the State breached the plea bargain. *See id.* at 3-4, 6-7. We also discussed the validity of Ramage’s plea and the circuit court’s exercise of sentencing discretion. *See id.* at 4-6, 7-8. We concluded that neither those issues nor any others constituted a basis for an arguably meritorious appeal. *See id.* at 8. Appointed counsel and this court thus followed the no-merit procedures precisely. *See Tillman*, 281 Wis. 2d 157, ¶17.

Accordingly, we have confidence in the proceedings underlying *Ramage I. Escalona-Naranjo* therefore governs here.

Because *Escalona-Naranjo* is applicable to this case, Ramage may pursue his most recent claims only if he offered the circuit court a sufficient reason for further litigation. *See id.*, 185 Wis. 2d at 184-85. We determine the sufficiency of Ramage’s reason by examining the four corners of his postconviction motion. *See State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

The postconviction motion that Ramage filed on March 22, 2016, offered no reason, much less a sufficient reason, for serial litigation. In the motion to reconsider, Ramage suggested that he was entitled to pursue his current claims because this court failed to address them in *Ramage II*. The circuit court properly rejected his suggestion. In *Ramage II*, we observed that Ramage’s appellate briefs included arguments challenging a postconviction order he did not timely appeal, and we explained that we lacked jurisdiction to review such an order. *See id.*, ¶16 n.6.; *see also* WIS. STAT. RULE 809.10(1)(e) (timely notice of appeal necessary for this court to have jurisdiction). Ramage’s failure to file a timely appeal of a postconviction order is not a reason to allow him to pursue an additional postconviction motion that raises once again the issues resolved in the earlier order. To the contrary, public policy requires courts to promote the finality of prior judgments and orders. *See State v. Walberg*, 109 Wis. 2d 96, 104, 325 N.W.2d 687 (1982).

Moreover, as Ramage acknowledges in this appeal, he previously raised his claims for plea withdrawal “on a number of occasions.” Accordingly, he cannot renew those claims now. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no

matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Upon the foregoing reasons,

IT IS ORDERED that the orders are summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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