



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

DISTRICT IV

December 26, 2017

To:

Hon. Elliott M. Levine
Circuit Court Judge
La Crosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Room 1200
La Crosse, WI 54601

Tim Gruenke
District Attorney
333 Vine St. Rm. 1100
La Crosse, WI 54601

Jacob J. Wittwer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Michael A. Alexander 458450
Columbia Corr. Inst.
P.O. Box 900
Portage, WI 53901-0900

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

2016AP2007

State of Wisconsin v. Michael A. Alexander (L.C. # 2003CF352)

Before Blanchard, Kloppenburg, and Fitzpatrick, 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).

Michael Alexander, pro se, appeals an order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2015-16).¹ After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We summarily affirm.

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

Alexander was convicted, after a 2004 jury trial, of first-degree intentional homicide, attempted first-degree intentional homicide, and two counts of first-degree recklessly endangering safety, all while armed. Alexander pursued a direct appeal, and we affirmed his conviction in *State v. Alexander*, No. 2007AP1270-CR, unpublished slip op. (WI App May 1, 2008).

In May 2009, Alexander filed a writ petition under *State v. Knight*, 168 Wis. 2d 509, 512-13, 484 N.W.2d 540 (1992), which we denied. Then, in October 2011, Alexander filed a pro se motion for postconviction relief under WIS. STAT. § 974.06, arguing that his trial counsel was ineffective for failing to object during the prosecutor's closing argument, that the court erred in admitting recorded statements of two witnesses who were unavailable to testify at trial, and that a court reporter failed to transcribe some trial testimony. The circuit court denied the motion, and Alexander appealed. We affirmed the order of the circuit court. See *State v. Alexander*, No. 2011AP2987, unpublished slip op. (WI App April 11, 2013).

This appeal arises from an additional pro se WIS. STAT. § 974.06 motion filed by Alexander in April 2016. Alexander asserted that he was innocent and again raised the issue of ineffective assistance of trial counsel, this time on the basis that counsel failed to make the case during closing argument that Alexander acted in self-defense. The circuit court denied the motion without a hearing on the ground that his claims were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-186, 517 N.W.2d 157 (1994). Alexander now appeals.

Alexander appears to believe that, by asserting a claim of innocence, he avoids the procedural bar of *Escalona-Naranjo*. However, in applying *Escalona-Naranjo*, we look not at

the issue presented, but whether the defendant articulates a sufficient reason for having failed to raise it in his prior postconviction and appellate proceedings. Alexander fails to do so. His assertion that he did not realize until recently that counsel's performance was deficient as to the issue of self-defense is not a sufficient excuse for him to challenge his judgment of conviction yet again. If it were, the procedural bar of *Escalona-Naranjo* and WIS. STAT. § 974.06(4) would be eviscerated, as many collateral challenges are raised by pro se litigants. We agree with the circuit court that the claims raised in Alexander's April 2016 postconviction motion are procedurally barred.

Notwithstanding the procedural bar, Alexander argues that we should exercise our power of discretionary reversal under WIS. STAT. § 752.35, on the basis that the real controversy was not fully tried as to the issue of self-defense. We note that this court exercises its discretionary reversal power sparingly, and only in the most exceptional cases. *State v. Schutte*, 2006 WI App 135, ¶62, 295 Wis. 2d 256, 720 N.W.2d 469. The record demonstrates that Alexander's self-defense claim was fully tried in the circuit court. The jury heard testimony from Alexander supporting his self-defense claim, heard closing argument from defense counsel on self-defense, and was instructed by the circuit court on self-defense. We are not persuaded that discretionary reversal is warranted under the circumstances.

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

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

Diane M. Fremgen
Clerk of Court of Appeals