

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We reject Seeley's arguments and affirm.

In 1995, a jury convicted Seeley of first-degree intentional homicide while using a dangerous weapon based on the stabbing death of Gilbert Froeber. Eyewitness testimony established that Seeley and Froeber were passengers in a car following a night of drinking. The two men began to argue and hit each other, at which point the driver pulled over and told them to get out of the vehicle if they wanted to fight. Seeley got out, pulled Froeber out, and hit Froeber a few times. Seeley then got back into the vehicle. As the vehicle began to drive slowly, Froeber walked alongside the vehicle carrying a stick and exchanging threats and vulgarities with Seeley. Seeley got a knife from under the driver's seat, exited the vehicle, and fatally stabbed Froeber.

Seeley appealed his conviction, arguing that the prosecutor committed plain error at trial. Seeley also challenged the circuit court's failure to award any sentencing credit for the time he spent in jail awaiting trial. In 1997, we rejected these arguments and affirmed Seeley's conviction.

Twenty years later, Seeley filed a postconviction motion under WIS. STAT. § 974.06, claiming that he received ineffective assistance of counsel during his direct appeal. Specifically, Seeley argued that his appellate counsel rendered deficient performance by failing to argue that Seeley received ineffective assistance of counsel at trial. Seeley argued that his defense attorney had failed to obtain Froeber's criminal record and present evidence of the victim's propensity for

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

violence. In addition, his defense attorney failed to object to the State's release of the vehicle in question and was therefore not able to inspect it to determine whether there was any blood in the vehicle. Seeley argued that these two failures prevented Seeley from potentially obtaining additional evidence to bolster his claim of self-defense, thereby prejudicing Seeley's defense.

The circuit court denied Seeley's motion without a hearing. Seeley filed a motion for reconsideration, which the circuit court also denied. Seeley appeals.

“[W]hether a § 974.06 motion alleges sufficient facts to require a hearing is a question of law that this court reviews de novo.” *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Here, the circuit court explained that, in order to be entitled to a hearing on his claims of ineffective assistance of appellate counsel, Seeley was required to show that “a particular nonfrivolous issue was *clearly stronger* than the issues that [appellate] counsel did present.” *Id.*, ¶45 (quoted source omitted). However, the circuit court concluded that Seeley had not met this burden because he had only “summarily assert[ed]” that his ineffective assistance of counsel claims were clearly stronger than the claims presented in his appeal, but had not provided any analysis to support this finding.

In his brief on appeal, Seeley has repeated his conclusory assertions that each of his claims of ineffective assistance of trial counsel were “clearly stronger” than the claims that his appellate attorney did pursue. However, as with his motions in the circuit court, Seeley has provided no analysis to support these assertions.

In its response, the State argues that Seeley has failed to overcome the hurdle to postconviction relief identified by the circuit court. Specifically, Seeley has not satisfied his burden of demonstrating that the issues that his appellate counsel failed to raise were “clearly stronger” than the issues that appellate counsel did raise. *See id.*, 360 Wis.2d 522, ¶4 (a defendant who alleges in a § 974.06 motion that his postconviction counsel was ineffective for failing to bring certain viable claims “must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought”).

Seeley did not file a reply brief. We therefore take him to have conceded the State’s argument. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (an argument is deemed admitted “where the respondent raises the grounds relied upon by the [circuit] court, and the appellant fails to dispute these grounds in a reply brief”).

Upon the foregoing reasons,

IT IS ORDERED that the circuit court order denying the motions for postconviction relief and for reconsideration is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals