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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 I

May 22, 2019

To:

Hon. Carolina Stark
Circuit Court Judge
901 N. 9th St.
Milwaukee, WI 53233

Abigail Potts
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

John Barrett
Clerk of Circuit Court
821 W. State Street, Room 114
Milwaukee, WI 53233

Jeff Poff 390966
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

Karen A. Loebel
Deputy District Attorney
821 W. State St.
Milwaukee, WI 53233

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

2018AP1676

State of Wisconsin v. Jeff Poff (L.C. # 2001CF5315)

Before Kessler, P.J., Brennan 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).

Jeff Poff, *pro se*, appeals the circuit court's order denying his postconviction motion brought pursuant to WIS. STAT. § 974.06 (2017-18).¹ The issue is whether Poff's claims are procedurally barred. Based on our review of the briefs and record, we conclude at conference

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

On February 1, 2002, Poff was convicted of one count of felony murder, with armed robbery as the predicate offense. The circuit court called Poff’s crime the worst felony murder case it had ever seen and imposed the maximum sentence of sixty years of initial incarceration and twenty years of extended supervision. Poff’s appointed appellate counsel filed a no-merit appeal. Counsel provided Poff with a copy of the no-merit report and advised him that he could respond. Poff opted not to file a response to the no-merit report. On February 28, 2005, we concluded that there were no issues of arguable merit based on our independent review of the record. We therefore affirmed the judgment of conviction.

On July 23, 2018, Poff filed a postconviction motion arguing that he received ineffective assistance of postconviction/appellate counsel because his appointed attorney did not argue that he received ineffective assistance of trial counsel on direct appeal. Poff further argued that his trial counsel provided him with constitutionally ineffective assistance because: (1) his attorney did not call witnesses to impeach the testimony of Heather Colandrea; (2) his attorney did not call various witnesses Poff believes would have testified about the events that led up to the time he arrived at the crime scene; and (3) his attorney should have investigated more thoroughly or conducted additional interviews with potential witnesses. The circuit court denied Poff’s motion.

Poff’s claims are procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), and *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574. *Escalona-Naranjo* mandates that a defendant “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion” unless the defendant provides a sufficient reason for failing to do so. *Id.*, 185 Wis. 2d at 185. *Tillman*

provides that when a defendant fails to raise issues in response to counsel's no-merit report, the defendant waives the right to raise those issues absent demonstrating a sufficient reason for failing to raise the issues previously. *See id.*, 281 Wis. 2d 157, ¶19.

Poff argues that his reason for failing to previously raise his claims is that his postconviction/appellate counsel was ineffective and failed to argue during his direct appeal that he received ineffective assistance of trial counsel. However, Poff has not explained his own failure to raise the issue of ineffective assistance of trial counsel by responding to the no-merit report. Therefore, we conclude that Poff's claims are procedurally barred under *Escalona-Naranjo* and its progeny.

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals