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DISTRICT II

August 28, 2019

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

2018AP1314-CR	State of Wisconsin v. William L. Avila (L.C. #2008CF366)
2018AP1315-CR	State of Wisconsin v. William L. Avila (L.C. #2008CF432)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

William L. Avila, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2017-18)¹ motion for postconviction relief. Upon reviewing the briefs and the record, we conclude at

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

conference this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the order of the circuit court.

In 2009, Avila pleaded guilty to and was convicted of repeated sexual assault of the same child, child exploitation, and sixteen counts of possession of child pornography. Thirty-two additional counts of possession of child pornography were dismissed and read in. The court sentenced Avila to a total of thirty-five years' initial confinement followed by twenty years' extended supervision.

Appellate counsel filed a no-merit appeal that examined his pleas and sentences. *State v. Avila*, Nos. 2010AP2774-CRNM/2010AP2775-CRNM, unpublished op. and order at 3 (WI App Sept. 11, 2011). Avila filed a lengthy response in which he asserted that his confession was coerced, that the addition of the child pornography charges was improper and the charges were multiplicitous, that the State breached the plea agreement at sentencing, and that trial counsel performed deficiently in several ways before he pled guilty. *Id.* at 3-4. This court concluded that none of the potential issues he raised had arguable merit, and that his guilty pleas waived any claims of deficient performance occurring before entry of his guilty pleas. *Id.* at 3, 5.

Avila then filed pro se motions, all unsuccessful, challenging his sentence and the amount of restitution and for sanctions against the Department of Corrections. He also sought federal habeas corpus relief; that, too, failed. *Avila v. Richardson*, 670 F. App'x 896 (7th Cir. 2016).

In the WIS. STAT. § 974.06 motion that underlies this appeal, Avila argued that trial counsel was ineffective for failing to file a suppression motion to exclude evidence obtained without a warrant, that his due process rights were violated, and that he was innocent. He also asserted that appellate counsel was ineffective for failing to fully research his case and for failing

to have complete discovery before filing the no-merit appeal. Finding that the “nearly identical arguments” in Avila’s no-merit response had been rejected, that he did not demonstrate either prong of ineffective assistance, *see Strickland v. Washington*, 466 U.S. 668, 687 (1984), and that his motion rested on conclusory, unsupported statements, the court denied the motion without a hearing.

On appeal, Avila once again asserts that trial counsel provided ineffective assistance and demands an evidentiary hearing and to withdraw his pleas. Some of his complaints already were raised and addressed on his direct appeal. Those that were not, could have been. Avila is procedurally barred from raising those issues now. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). “[A] defendant may not raise issues in a subsequent [WIS. STAT.] § 974.06 motion that he [or she] could have raised in a response to a no-merit report, absent a ‘sufficient reason’ for failing to raise the issues earlier in the no-merit appeal.” *State v. Allen*, 2010 WI 89, ¶92, 328 Wis. 2d 1, 786 N.W.2d 124.

Avila contends appellate counsel also was ineffective, claiming she failed to fully research his case and did not have the full “discovery” before filing the no-merit appeal. He does not state what discovery was missing or explain its relevance to his case. “[T]o adequately raise a claim for relief, a defendant must allege ‘sufficient material facts—*e.g.*, who, what, where, when, why, and how—that, if true, would entitle [the defendant] to the relief he seeks.’” *State v. Romero-Georgana*, 2014 WI 83, ¶37, 360 Wis. 2d 522, 849 N.W.2d 668 (second alteration in original). Upon finding that Avila’s motion “relie[d] heavily on conclusory statements, unsupported by the record,” it was within the circuit court’s discretion to deny his motion without a hearing. *See State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court 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