



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 I

March 30, 2021

To:

Hon. Milton L. Childs Sr.
Branch 2
821 W. State St.
Milwaukee, WI 53233

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

Nicholas DeSantis
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

Elizabeth A. Longo
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

Jeremy Ezekiel Hollis 445941
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI. 54307-9033

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

2020AP772

State of Wisconsin v. Jeremy Ezekiel Hollis (L.C. # 2013CF1672)

Before Brash, P.J., Donald and White, 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).

Jeremy Ezekiel Hollis, *pro se*, appeals an order denying his postconviction motion brought under WIS. STAT. § 974.06 (2019-20).¹ Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT.

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

RULE 809.21. Hollis's claims are procedurally barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and therefore we summarily affirm.

In 2013, the State charged Hollis with six offenses. Hollis resolved the charges with a plea agreement. Pursuant to its terms, he pled guilty to four crimes: one count of possession with intent to deliver more than three grams but not more than ten grams of methylenedioxypropylvaleron and one count of possession with intent to deliver more than forty grams of cocaine, both counts as a party to a crime; one count of possessing a firearm as a felon; and one count of disorderly conduct by use of a dangerous weapon. The remaining charges were dismissed and read in for sentencing purposes. At the sentencing hearing, the State, as agreed, recommended a global disposition of six years of initial confinement and four years of extended supervision. The circuit court, however, did not adopt the State's sentencing recommendation and instead imposed an aggregate thirteen years and nine months of initial confinement and thirteen years of extended supervision.

Hollis pursued a direct appeal in which he challenged the circuit court's pretrial order denying his motion to suppress evidence found during a search of his home. We affirmed. *See State v Hollis (Hollis I)*, No. 2016AP1564-CR, unpublished slip op. (WI App Sept. 6, 2017).

Hollis, *pro se*, next filed the postconviction motion underlying this appeal. He alleged that the circuit court breached the plea agreement by imposing an aggregate sentence longer than that recommended by the State; and that his trial counsel was ineffective for failing to object to the alleged breach. The circuit court rejected his claims, and this appeal followed.

"We need finality in our litigation." *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, although prisoners may raise claims under WIS. STAT. § 974.06 after the time for a direct appeal

has passed, the statute contains a limitation. Pursuant to § 974.06(4), a convicted person seeking to raise claims under § 974.06 must identify a sufficient reason for failing to raise those claims in a previous postconviction motion or on direct appeal. See *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Whether a defendant's claims are barred by *Escalona-Naranjo* in any particular case presents a question of law that this court reviews *de novo*. See *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Hollis pursued a direct appeal in *Hollis I*, and *Escalona-Naranjo* therefore governs this case. See *Tolefree*, 209 Wis. 2d at 424-25. Accordingly, Hollis must present a sufficient reason for serial litigation. See *Escalona-Naranjo*, 185 Wis. 2d at 184. We determine the sufficiency of Hollis'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. Hollis's postconviction motion, however, offered no reason, much less a sufficient reason, for failing to raise his claims in *Hollis I*.

In his appellate briefs, Hollis alleges that he failed to pursue his current claims previously because his postconviction counsel was ineffective for failing to raise those claims. This allegation comes too late. Hollis was required to state his reason for serial litigation in his postconviction motion. See *Allen*, 274 Wis. 2d 568, ¶¶9, 27. We normally do not consider arguments raised for the first time on appeal. See *Shadley v. Lloyds of London*, 2009 WI App 165, ¶25, 322 Wis. 2d 189, 776 N.W.2d 838.

Moreover, were we to consider Hollis's belated reason for failing to raise his claims in his original postconviction motion, we would reject that reason as insufficient. In some circumstances, postconviction counsel's ineffectiveness may constitute a sufficient reason for an

additional postconviction motion, but the defendant must first show that postconviction counsel was in fact ineffective. *See State v. Balliette*, 2011 WI 79, ¶63, 336 Wis. 2d 358, 805 N.W.2d 334. We assess claims of ineffective assistance of postconviction and appellate counsel by applying the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *See Balliette*, 336 Wis. 2d 358, ¶¶3, 28. Under *Strickland*, a criminal defendant must show both a deficiency in counsel’s performance and prejudice as a result. *See id.*, 466 U.S. at 687. If a defendant fails to make an adequate showing as to one prong, the court need not address the other. *See id.* at 697.

Hollis cannot show that his postconviction counsel performed deficiently by failing to pursue his current claims. Those claims all turn on his contention that the circuit court did not comply with his plea agreement, but a circuit court is not bound by a defendant’s plea agreement. *See State v. Hampton*, 2004 WI 107, ¶¶27-28, 274 Wis. 2d 379, 683 N.W.2d 14. Accordingly, if Hollis’s postconviction counsel had sought to raise a claim premised on the theory that the circuit court did not comply with the terms of Hollis’s plea agreement—regardless of whether that claim was an allegation that the circuit court breached the agreement, or an allegation that trial counsel failed to object to the alleged breach, or both—any court considering such a claim would have rejected it as meritless. *See id.* An attorney does not perform deficiently by failing to pursue a meritless claim. *See State v. Sanders*, 2018 WI 51, ¶29, 381 Wis. 2d 522, 912 N.W.2d 16. Hollis therefore cannot show that his postconviction counsel’s failure to raise his current claims constituted ineffective assistance of counsel justifying serial litigation. *See Strickland*, 466 U.S. at 687.

In sum, Hollis fails to offer a sufficient reason for proceeding on his claims. We therefore conclude that his claims are barred, and we summarily affirm.

IT IS ORDERED that the postconviction order is summarily affirmed. *See* 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