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DISTRICT IV

December 30, 2021

To:

Hon. Nicholas McNamara
Circuit Court Judge
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
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Jerry L Anderson 221980
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You are hereby notified that the Court has entered the following opinion and order:

2021AP45

State of Wisconsin v. Jerry L. Anderson (L.C. # 2008CF1778)

Before Kloppenburg, Fitzpatrick, and Graham, 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).

Jerry Anderson, pro se, appeals a circuit court order denying his postconviction motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm on the basis that Anderson's claims are procedurally barred.

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

Following a jury trial in 2008, Anderson was convicted of false imprisonment, strangulation and suffocation, second degree reckless endangerment of safety, felony bail-jumping, and four counts of misdemeanor battery. Anderson filed several pro se postconviction motions seeking a new trial. The circuit court denied the motions after an evidentiary hearing. Anderson appealed, and this court affirmed the circuit court's decision. *See State v. Anderson*, No. 2010AP2599-CR, unpublished slip op. (WI App May 10, 2012).

Anderson filed at least six more postconviction motions pursuant to WIS. STAT. § 974.06, all of which were denied by the circuit court. In an order denying Anderson's fifth postconviction motion, the circuit court concluded that his claims were barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Anderson appealed, and this court affirmed, stating, "When a defendant has filed several postconviction motions, appeals, or combinations thereof, he is barred from raising a new claim unless he shows sufficient reasons for not raising that claim in each of his previous motions and/or appeals." *See State v. Anderson*, No. 2019AP668, unpublished slip op. ¶12 (June 11, 2020). This court concluded that Anderson had failed to show a sufficient reason for not raising his claims earlier, and declined to address the merits of his claims.

On September 21, 2020, Anderson filed yet another postconviction motion, entitled "Notice/Motion to Vacate Void Judgment." He argued the circuit court lacked jurisdiction and lost competency to proceed to trial on the count of reckless endangerment of safety. The circuit court denied the motion using a form order, and Anderson now appeals. The State argues that Anderson's claims on appeal are barred under WIS. STAT. § 974.06(4) and *Escalona-Naranjo*. We agree.

In his appellant’s brief, Anderson does not attempt to assert a sufficient reason for failing to raise his claims earlier, as would be required to avoid the procedural bar under WIS. STAT. § 974.06(4) and *Escalona-Naranjo*. Rather, Anderson takes the position that he “does not have to show a sufficient reason for failing to raise the issue in his Direct Appeal,” purportedly due to the jurisdictional nature of his arguments.

Anderson’s position is contradicted by long-standing precedent. Both this court and the Wisconsin Supreme Court have recognized that the procedural bar under WIS. STAT. § 974.06(4) applies to jurisdictional claims. See *State v. Braun*, 185 Wis. 2d 152, 165, 516 N.W.2d 740 (1994) (“sufficient reason” exception extends to issues of constitutional or jurisdictional dimensions); see also *State v. Casteel*, 2001 WI App 188, ¶8, 247 Wis. 2d 451, 634 N.W.2d 338 (court dismissed appeal on *Escalona-Naranjo* grounds, when the appellant attempted to raise a jurisdictional argument).

We conclude that Anderson’s claims are subject to the procedural bar of *Escalona-Naranjo* and its progeny, and that he has not shown a sufficient reason for failing to raise them on direct appeal or in a previous WIS. STAT. § 974.06 postconviction motion.

IT IS ORDERED that the order is summarily affirmed under 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