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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 II

May 18, 2022

To:

Hon. Steven Michael Cain
Circuit Court Judge
Electronic Notice

Marylou Mueller
Clerk of Circuit Court
Ozaukee County Courthouse
Electronic Notice

Adam Y. Gerol
Electronic Notice

Christine A. Remington
Electronic Notice

Timothy L. Reddick, #243236
Racine Correctional Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2020AP593

State of Wisconsin v. Timothy L. Reddick (L.C. #2011CF244)

Before Gundrum, P.J., Grogan and Kornblum, 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).

Timothy L. Reddick, pro se, appeals an order denying his postconviction motion and an order denying his motion for reconsideration. He argues the circuit court erred in applying the procedural bar in *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Based on 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 affirm.

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

In 2014, Reddick was convicted by a jury of first-degree reckless homicide in connection with the overdose death of Erik Anderson-Yakowicz in 2011. Reddick pursued a direct appeal, arguing the circuit court erred in refusing to suppress statements he made to police. *See State v. Reddick*, No. 2015AP954-CR, unpublished slip op., ¶1. Recognizing that it was a “close case,” we nonetheless affirmed after concluding the court properly denied the motion to suppress because Reddick did not unequivocally invoke his right to counsel. *Id.*, ¶¶15-16.

In 2018, Reddick filed a pro se petition for habeas corpus, asserting ineffective assistance of appellate counsel under *State v. Knight*, 168 Wis.2d 509, 484 N.W.2d 540 (1992). He asserted his appellate counsel’s failure to include the video recording of Reddick’s police interrogation on appeal left this court unable to determine whether his *Miranda* rights were violated.² We denied the petition, concluding that even if Reddick’s appellate counsel had performed deficiently, he was not prejudiced because his conviction was supported by ample evidence besides his inculpatory statements.

In 2019, Reddick filed the present pro se WIS. STAT. § 974.06 motion for postconviction relief, alleging various instances of ineffective assistance of trial and appellate counsel. The circuit court concluded the issues Reddick raised could have been raised in his direct appeal. It also concluded appellate counsel’s strategic decision to focus on the *Miranda* issue was not a sufficient reason for not having raised the issues previously. Accordingly, the court concluded Reddick’s motion was procedurally barred under *Escalona-Naranjo*.

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

Reddick filed a motion for reconsideration, arguing he was guilty only of “selling a \$20.00 bag of drugs” and questioning “how ... the need for finality [can] outweigh the need for justice.” The circuit court denied his motion, noting Reddick was afforded opportunities to litigate postconviction issues and concluding “finality takes precedence at this stage of the litigation.” Reddick appeals.

Whether a defendant is procedurally barred from filing a successive postconviction motion under WIS. STAT. § 974.06 is a question of law. See *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668. *Escalona-Naranjo* holds that all grounds for relief under § 974.06 must be raised on direct appeal or in a prior postconviction motion, unless there is a sufficient reason for having failed to do so. *Escalona-Naranjo*, 185 Wis. 2d at 181. It is undisputed that Reddick’s present claims were not raised in his direct appeal.

Reddick argues on appeal that though he sold heroin to the deceased individual, the discovery of multiple bindles of heroin in the bedroom where the overdose occurred relieves him of criminal liability for reckless homicide. As for whether a sufficient reason exists for having failed to previously raise the present issues, Reddick argues his trial counsel was constitutionally ineffective for failing to present exculpatory evidence, and therefore his appellate counsel erred by deciding to pursue the *Miranda* issue. Essentially, Reddick asks us to cast aside *Escalona-Naranjo*’s holding and the requirements of state law, see WIS. STAT. § 974.06(4), and reach the merits of his claims, regardless of whether those claims are procedurally proper.

We decline to do so. Reddick’s arguments are barred under *Escalona-Naranjo*. We need not—and do not—reach the merits of his assertions regarding the performance of his appellate counsel, as his argument is undeveloped, see *State v. Pettit*, 171 Wis. 2d 627, 646, 492

N.W.2d 633 (Ct. App. 1992), and in any event his attempt to challenge his appellate counsel's constitutional effectiveness was incorrectly filed in the circuit court instead of in this court, *see State ex rel. Warren v. Meisner*, 2020 WI 55, ¶36, 392 Wis. 2d 1, 944 N.W.2d 588. However, to the extent Reddick intends to suggest the arguments he now raises are clearly stronger than those he raised on direct appeal, our explicit observation that Reddick's appeal presented a close case tends to undercut that notion. Reddick's present claims are procedurally inappropriate, and the circuit court properly denied his postconviction motion.

IT IS ORDERED that the orders of the circuit court are 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