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**DISTRICT IV**

June 15, 2023

To:

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Clerk of Circuit Court  
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Electronic Notice

James A. Willison 129786  
Oregon Correctional Institution  
P.O. Box 25  
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You are hereby notified that the Court has entered the following opinion and order:

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2022AP881

State of Wisconsin v. James A. Willison (L.C. # 1982CF11)

Before Blanchard, P.J., 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).**

James Willison, pro se, appeals an order denying his WIS. STAT. § 974.06 (2021-22)<sup>1</sup> postconviction motion for a new trial based on ineffective assistance of trial counsel and prosecutorial misconduct. Based upon our review of the briefs and record, we conclude at conference that this appeal is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version.

Following a 1982 jury trial, Willison was convicted of first-degree murder and armed robbery, both as a party to a crime. As part of his direct appeal, Willison pursued a postconviction motion seeking a new trial. He argued that the circuit court erred by changing venue, refusing to instruct the jury on second-degree murder, and denying a motion for mistrial based on remarks by the prosecutor. The court denied the motion, and we affirmed on appeal.<sup>2</sup>

In 2014, Willison filed a pro se WIS. STAT. § 974.06 postconviction motion. Willison argued that his trial counsel was ineffective by failing to object to the jury instructions and that his postconviction counsel was ineffective by failing to raise that argument in Willison’s original postconviction motion. The circuit court denied the motion, and Willison did not appeal.

In 2021, Willison filed a second pro se WIS. STAT. § 974.06 postconviction motion, which underlies this appeal. In his motion, Willison alleges that the circuit court erroneously instructed the jury on party to a crime liability; that trial counsel was ineffective by failing to call Willison’s co-actor to testify; that postconviction counsel was ineffective by failing to raise that claim of ineffective assistance of trial counsel; and that the prosecutor committed misconduct by allowing Willison to remain incarcerated despite allegedly knowing that he was innocent. The circuit court denied the motion as procedurally barred.

“All grounds for relief available to a person under [WIS. STAT. § 974.06] must be raised in his or her original, supplemental or amended motion.” Sec. 974.06(4). A defendant seeking to raise a claim that could have been raised in a prior postconviction motion must show a

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<sup>2</sup> The Honorable James Fiedler presided over the original proceedings and entered the judgment of conviction and order denying the motion for postconviction relief.

“sufficient reason” for failing to raise that claim earlier, or the claim is barred. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). “Whether a WIS. STAT. § 974.06 motion alleges a sufficient reason for failing to bring available claims earlier is a question of law subject to de novo review.” *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Willison argues that his claims are not procedurally barred because he had a sufficient reason for failing to raise his claims earlier. *See* WIS. STAT. § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 181-86. We disagree.

First, Willison argues that his postconviction counsel was ineffective by failing to raise his current claims in his direct postconviction motion, and that postconviction counsel’s ineffectiveness constituted a sufficient reason for Willison’s failure to raise these claims earlier. *See State v. Allen*, 2010 WI 89, ¶¶29, 85, 328 Wis. 2d 1, 786 N.W.2d 124 (recognizing that ineffective assistance of postconviction counsel may constitute a sufficient reason why an issue was not raised on direct appeal). However, even assuming that the ineffective assistance of postconviction counsel was a sufficient reason for failing to raise these claims in Willison’s original postconviction motion, it does not provide a sufficient reason for Willison’s failure to raise them in the pro se WIS. STAT. § 974.06 postconviction motion he filed in 2014. Accordingly, the alleged ineffective assistance of postconviction counsel is insufficient to overcome the procedural bar.

Second, Willison argues that, as a pro se litigant, his ignorance of the law constituted a sufficient reason for failing to raise his legal claims earlier. Willison cites language from *Allen*, *id.*, ¶91, for the proposition that a “sufficient reason” can include “ignorance of the ... law

underlying the claim.” However, in *Allen*, our supreme court determined that the defendant’s alleged lack of awareness of the law failed to provide a sufficient reason, and that the defendant’s reliance on another case, *State v. Howard*, 211 Wis. 2d 269, 564 N.W.2d 753 (1997), was misplaced. *Allen*, 328 Wis. 2d 1, ¶44. As the *Allen* court explained, *Howard* involved a situation in which “a subsequent supreme court decision ‘constituted a new rule of substantive law’” and, under those circumstances, “the defendant’s lack of awareness of the legal basis for his claim could constitute a sufficient reason for not having raised the claim earlier.” *Id.*, 328 Wis. 2d 1, ¶44 (citing *Howard*, 211 Wis. 2d at 287-88, *overruled on other grounds by State v. Gordon*, 2003WI69, 262 Wis. 2d 380, 663 N.W.2d 765). By contrast, the defendant in *Allen* did not “point to any change in law that has made him aware of a claim now that he was not aware of at the time of his” no-merit appeal and, therefore, he failed to show a sufficient reason based on his ignorance of the law. *See id.* Here, as in *Allen*, Willison’s ignorance of the law does not provide a sufficient reason for failing to raise his claims previously.

Accordingly, the circuit court properly denied Willison’s most recent WIS. STAT. § 974.06 motion because Willison failed to establish a sufficient reason for failing to raise his current claims in the pro se postconviction motion he filed in 2014. *See Escalona-Naranjo*, 185 Wis. 2d at 181-86. The procedural bar is dispositive, and we do not address the merits of Willison’s claims.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*