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DISTRICT I

June 13, 2023

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
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Donald V. Latorraca
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Lamondre Moore 326060
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You are hereby notified that the Court has entered the following opinion and order:

2021AP220	State of Wisconsin v. Lamondre Moore (L.C. # 2013CF4753)
2021AP221	State of Wisconsin v. Lamondre Moore (L.C. # 2014CF4475)

Before Brash, C.J., Dugan 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).

Lamondre Moore, *pro se*, appeals from an order of the circuit court that denied his WIS. STAT. § 974.06 motion without a hearing. 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 (2021-22).[1] The order is summarily affirmed.

In May 2015, a jury convicted Moore on one count of first-degree sexual assault of a child under age thirteen, one count of battery as an act of domestic abuse, and one count of

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

felony witness intimidation. The circuit court imposed consecutive sentences totaling fifty years and nine months of imprisonment.[2]

In November 2017 and with the assistance of counsel, Moore filed a postconviction motion seeking a new trial on the ground that trial counsel was ineffective for failing to object to hearsay statements made by one of the victims to a neighbor and for failing to object to comments in the State's closing arguments that "were not supported by any evidence adduced at trial." The circuit court denied the motion without a hearing.[3] Moore appealed; this court affirmed. *See* ***State v. Moore***, Nos. 2018AP253-CR and 2018AP254-CR, unpublished slip op., ¶¶1, 16 (WI App Feb. 7, 2019).

In August 2019, Moore filed a motion for sentence modification pursuant to WIS. STAT. § 973.19, relating to his inability to enroll in court-ordered treatment programs at his prison due to the length of his sentence. Accompanying the motion was a four-page letter in which Moore identified several ways in which he believed his trial attorney was ineffective, including counsel's alleged failure to: introduce expert testimony "that would [have] helped to impeach the complaining witness"; move to strike testimony of the State's medical experts; adequately review the police report, "all discovery," and medical reports; conduct "a significant independent investigation"; interview the neighbor; and call experts to support Moore's theory of DNA transfer. Moore argued that "but for the numerous, unreasonable errors of [his] counsel, there is a reasonable probability that the results would have been different" and that "deficiencies in

[2] The Honorable Daniel L. Konkol presided at sentencing.

[3] The Honorable Carolina Stark denied the postconviction motion.

counsel's performance underminded [sic] confidence in the outcome of the case." Citing ***Strickland v. Washington***, 466 U.S. 668 (1984), he asserted that "[t]his should be grounds to have this case heard before a Judge."

Approximately one week later, the circuit court issued a one-page order. With respect to sentence modification, the court noted that Moore was "not being treated differently than any other inmate," so the court was unpersuaded to modify the sentence. The order further states:

> [Moore] alleges in a separate letter that trial counsel provided ineffective assistance during his jury trial which undermines confidence in the outcome of the case. To the extent that the defendant's letter purports to raise postconviction claims that were not raised during his prior appeal, they are deemed waived. ***State v. Escalona-Naranjo***, 185 Wis. 2d 169, 178[, 517 N.W.2d 157] (1994), as it interprets section 974.06, Stats, requires a defendant to raise all grounds for postconviction relief in his original motion or appeal. Failure to do so precludes a defendant from raising additional issues, including claims of constitutional or jurisdictional violations, in a subsequent motion or appeal where those issues could have been raised previously. ***Escalona-Naranjo***, *supra*. Moreover, the allegations set forth in the defendant's letter are conclusory and do not warrant relief of any kind.

The circuit court thus denied Moore's "motion for sentence modification or other postconviction relief." Moore did not appeal that order.

In April 2020, Moore filed the current WIS. STAT. § 974.06 motion. He requested an evidentiary hearing and a new trial based on ineffective assistance of both trial and postconviction counsel. The circuit court held two rounds of briefing, after which it denied Moore's motion without a hearing, concluding that the arguments were procedurally barred by ***Escalona*** or, alternatively, that Moore had failed to demonstrate any ineffectiveness by his attorneys. Moore appeals, arguing that the circuit court erred when it held that he "was

procedurally barred from filing his claims in his § 974.06 motion because he failed to raise them in his motion for sentence modification."

A hearing on a postconviction motion is required only when the movant alleges sufficient material facts that, if true, would entitle him or her to relief. *See* ***State v. Sulla***, 2016 WI 46, ¶26, 369 Wis. 2d 225, 880 N.W.2d 659. The circuit court has the discretion to deny "even a properly pled motion … without holding an evidentiary hearing if the record conclusively demonstrates that the defendant is not entitled to relief." *See* ***id.***, ¶30. Issues that could have been raised on direct appeal or in a previous motion are barred absent a sufficient reason for not raising them in the earlier proceedings. *See* WIS. STAT. § 974.06; *see also* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Whether a motion is procedurally barred is a question of law. *See* ***State v. Allen***, 2010 WI 89, ¶15, 328 Wis. 2d 1, 786 N.W.2d 124.

Moore is correct when he notes that a motion for sentence modification is different from a WIS. STAT. § 974.06 motion; "sentence modification and § 974.06 motions are two separate forms of relief, such that the filing of one does not preclude the filing of the other." *See* ***State v. Starks***, 2013 WI 69, ¶50, 394 Wis. 2d 274, 833 N.W.2d 146. However, Moore is incorrect when he claims the circuit court held his current § 974.06 motion is barred by his prior sentence modification motion.

Courts are not bound by the labels placed on papers. *See* ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). Rather, we "look to the facts pleaded … to determine whether the party should be granted relief." *See* ***id.*** Accordingly, the circuit court construed Moore's 2019 "letter" as a WIS. STAT. § 974.06 claim for relief based on ineffective assistance of counsel. Such construction is consistent with the letter's claim that but for counsel's errors

"there is a reasonable probability that the results would have been different,"[4] its claim that "counsel's performance underminded [sic] confidence in the outcome,"[5] and its invocation of ***Strickland***.[6] It is the prior § 974.06 ineffective-assistance claim, not the sentence modification request, that bars Moore's current motion.

Even if Moore's current WIS. STAT. § 974.06 motion contains sufficient reason, in the form of ineffective postconviction counsel, to explain why the current ineffective assistance claims were not raised in his original postconviction motion and appeal, he offers no reason, much less sufficient reason, to explain why the claims were not raised in 2019. The circuit court properly concluded that the current motion is procedurally barred, and it did not err when it denied the motion without a hearing.

Upon the foregoing, therefore,

IT IS ORDERED that the 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

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[4] *See* ***State v. Sprang***, 2004 WI App 121, ¶25, 274 Wis. 2d 784, 683 N.W.2d 522 ("Prejudice generally results when there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different.")

[5] *See* ***State v. Jackson***, 2023 WI 3, ¶10, 405 Wis. 2d 458, 983 N.W.2d 608 ("A 'reasonable probability' in this context [of ineffective assistance] means 'a probability sufficient to undermine confidence in the outcome.'") (citation omitted).

[6] ***Strickland v. Washington***, 466 U.S. 668 (1984), is the "seminal decision on ineffective assistance of counsel claims[.]" *See* ***State v. Hunt***, 2014 WI 102, ¶38, 360 Wis. 2d 576, 851 N.W.2d 434.