



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 IV

October 3, 2024

To:

Hon. Martin J. De Vries
Circuit Court Judge
Electronic Notice

Christine A. Remington
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Ronald L. Kupsy 618624
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2023AP467

State of Wisconsin v. Ronald L. Kupsy (L.C. # 2017CF427)

Before Kloppenburg, P.J., Blanchard, 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).

Ronald Kupsy appeals pro se a circuit court order denying his postconviction motion under WIS. STAT. § 974.06 (2021-22).¹ Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We affirm.

Kupsy was convicted of assault by a prisoner in violation of WIS. STAT. § 946.43(2m)(a). Following his conviction, appointed counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32. Kupsy filed a response to the report. He argued that trial counsel was

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

ineffective by failing to call a psychologist to testify at trial. He also challenged the \$295 restitution award. In an opinion issued in 2021, we concluded that there was no arguable merit to any issue that could be raised on appeal, including the issues that Kupsky raised relating to the psychologist's testimony and the restitution award. We affirmed Kupsky's conviction. *See State v. Kupsky*, No. 2020AP405-CRNM, unpublished op. and order (WI App April 29, 2021).

Subsequently, Kupsky filed his postconviction motion under WIS. STAT. § 974.06. He claimed that the State withheld multiple types of discovery, resulting in multiple violations of *Brady v. Maryland*, 373 U.S. 83 (1963). The circuit court denied the motion. It concluded that Kupsky's claims were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). This appeal follows.

Under *Escalona-Naranjo*, “claims that could have been raised on direct appeal or in a previous [WIS. STAT.] § 974.06 motion are barred from being raised in a subsequent § 974.06 postconviction motion absent a showing of a sufficient reason for why the claims were not raised on direct appeal or in a previous § 974.06 motion.” *State v. Allen*, 2010 WI 89, ¶28, 328 Wis. 2d 1, 786 N.W.2d 124 (quoted source and alteration omitted). Whether a claim is procedurally barred by *Escalona-Naranjo* is a question of law that we review de novo. *State v. Kletzien*, 2011 WI App 22, ¶9, 331 Wis. 2d 640, 794 N.W.2d 920.

Here, we agree with the circuit court that Kupsky's discovery-related claims are procedurally barred under *Escalona-Naranjo*. Kupsky could have raised those claims in his no-merit appeal, and he has not shown a sufficient reason for failing to raise the claims at that time.

Kupsky argues that the procedural bar under *Escalona-Naranjo* does not apply to his case because he did not have a direct appeal. We reject this argument because Kupsky's no-merit appeal qualifies as a direct appeal for purposes of *Escalona-Naranjo*. *See State v.*

Tillman, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574 (“[W]hen a defendant’s postconviction issues have been addressed by the no merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously.”).

Kupsky also argues that he has a sufficient reason for failing to raise his discovery-related claims in his no-merit appeal, namely, that his postconviction counsel was ineffective. In some instances, ineffective assistance of counsel may be a sufficient reason for failing to raise an available claim. *State v. Romero-Georgana*, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668. However, a defendant “must allege specific facts that, if proved, would constitute a sufficient reason for failing to raise the issues in a response to a no-merit report.” *Allen*, 328 Wis. 2d 1, ¶91. A conclusory allegation is insufficient. *Id.*, ¶90. Here, Kupsky’s allegation that postconviction counsel was ineffective is conclusory. It lacks specific supporting allegations that, if proved, would establish the alleged ineffectiveness according to the legal standards for ineffective assistance of counsel.

Therefore,

IT IS ORDERED that the circuit court’s order is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals