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DISTRICT IV

January 3, 2013

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

2011AP2705

State of Wisconsin v. Bobby L. Williams (L.C. #2003CF137)

Before Higginbotham, Sherman and Blanchard, JJ.

Bobby Williams appeals pro se an order denying his second WIS. STAT. § 974.06 postconviction motion. He argues that his postconviction counsel was ineffective in not pursuing certain claims of ineffective assistance of trial counsel. Based upon 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 (2009-10).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

In 2003, after a jury trial, Williams was convicted of repeated sexual assault of the same child. His appointed postconviction counsel was allowed to withdraw. Williams proceeded pro se and filed a timely postconviction motion under WIS. STAT. RULE 809.30.² That motion was denied. Williams appealed but voluntarily dismissed the appeal. See *State v. Bobby L. Williams*, No. 2005AP271-CR, unpublished order (WI App July 13, 2005). In 2007, Williams, pro se, moved the trial court for a post-trial hearing on the grounds that one of the jurors suggested coercion during jury deliberations.³ The motion was denied and the ruling was affirmed on appeal. See *State v. Bobby L. Williams*, No. 2007AP2533, unpublished op. and order (WI App Aug. 4, 2009). In 2011, Williams, pro se, filed a motion for postconviction relief alleging ineffective assistance of postconviction counsel in not filing a motion alleging ineffective assistance of trial counsel.⁴ The trial court denied the motion concluding that the motion was procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994), and WIS. STAT. § 974.06(4).

WISCONSIN STAT. § 974.06 does not “create an unlimited right to file successive motions for relief.” *State ex rel. Dismuke v. Kolb*, 149 Wis. 2d 270, 273, 441 N.W.2d 253 (Ct. App. 1989). Under § 974.06(4), if a ground for relief was not raised in an original postconviction

² Williams’ postconviction motion alleged ineffective assistance of trial counsel, denial of equal protection of the law because there was no African American person on the jury, and the improper admission of certain evidence.

³ The juror contacted Williams’ trial counsel in the early part of 2006.

⁴ Williams alleged trial counsel was ineffective for not objecting at the preliminary hearing that the victim did not testify in person and did not provide exact dates of the alleged offenses, for not claiming that Williams was deprived of his right to confront and cross-examine the victim at the preliminary hearing, and for not challenging the sufficiency of the complaint. Williams also alleged that postconviction counsel failed to pursue claims that one juror was coerced and that the prosecution failed to provide proof beyond a reasonable doubt.

motion or a previous § 974.06 motion, a defendant must show a sufficient reason why it was not asserted previously. *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756; *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Whether claims are procedurally barred is a question of law. See *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Ineffective assistance of postconviction counsel may provide a sufficient reason for a defendant's failure to raise certain claims in his or her WIS. STAT. RULE 809.30 postconviction motion. See *State v. Balliette*, 2011 WI 79, ¶37, 336 Wis. 2d 358, 805 N.W.2d 334; *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). The State argues that Williams cannot claim that postconviction counsel was ineffective because Williams elected to have postconviction counsel withdraw and pursued postconviction relief pro se.

We need not concern ourselves with the effectiveness of postconviction counsel's performance as providing a sufficient reason or not. Williams previously filed a postconviction motion under WIS. STAT. § 974.06. He has not advanced any reason why he did not include the claims raised in this second § 974.06 postconviction motion in his first one. Williams has not advanced a sufficient reason to avoid the procedural bar.

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals