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**DISTRICT IV**

April 3, 2013

To:

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

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2011AP2471

State v. Armando P. Rodriguez (L. C. #2006CF889)

Before Lundsten, P.J., Higginbotham and Blanchard, JJ.

Armando Rodriguez, pro se, appeals an order denying his WIS. STAT. § 974.06 motion to withdraw his no contest plea to third-degree sexual assault, as a repeater.<sup>1</sup> Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21.

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<sup>1</sup> References to the Wisconsin Statutes are to the 2011-12 version unless noted. We also note Rodriguez filed a separate "Motion To Withdraw Plea" in this court with his brief and appendix, purportedly under WIS. STAT. § 974.06. We do not separately address this motion.

Rodriguez was charged with sexual assault of a child under the age of sixteen, as a repeat offender. The victim was fifteen years old at the time of the assault. As a result of a plea bargain, Rodriguez pled no contest to one count of third-degree sexual assault, as a repeater. Before he was sentenced, Rodriguez moved to withdraw his plea alleging that he did not commit the crime. After a hearing, the circuit court denied the motion, concluding Rodriguez had not offered a fair and just reason for plea withdrawal but, rather, was trying to avoid “the moment of truth.” The court imposed a sentence of nine years’ initial confinement and five years’ extended supervision.

We affirmed his conviction in its entirety pursuant to a no-merit report. *See State v. Rodriguez*, No. 2009AP509-CRNM, unpublished slip op. (WI App. Nov. 5, 2009). Rodriguez subsequently filed his first pro se postconviction motion, which the circuit court denied after a hearing.<sup>2</sup> Rodriguez did not appeal this ruling.

Several years later, Rodriguez commenced the current litigation by filing a series of pro se postconviction motions. Rodriguez now appeals the denial of a motion to withdraw his plea.

Rodriguez’s arguments are undeveloped and fall below even the liberal thresholds of acceptability for a pro se appellant. We will not abandon our neutrality to develop arguments. *See M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

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<sup>2</sup> Rodriguez’s actual motion is not part of the record on appeal. However, the motion hearing transcript is in the record.

Even were we to address Rodriguez's arguments, as best we can discern them, the arguments are procedurally barred. Defendants are not entitled to pursue an endless succession of postconviction motions. A defendant cannot raise claims in a postconviction motion that were raised or could have been raised on direct appeal. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-85, 517 N.W.2d 157 (1994). That rule also applies when the earlier appeal resulted in a no-merit report. See *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574.

Absent a "sufficient reason" for doing so, a defendant may not raise issues in later proceedings that could have been raised in the no-merit proceeding, if the no-merit procedures were followed and the court has sufficient confidence in the outcome of the no-merit proceedings to warrant application of the procedural bar. *Id.*, ¶20. To satisfy the "sufficient reason" standard, the defendant has the burden to "do something to undermine [the appellate court's] confidence in the court's [no-merit] decision, perhaps by identifying an issue of such obvious merit that it was an error by the court not to discuss it." *State v. Allen*, 2010 WI 89, ¶83, 328 Wis. 2d 1, 786 N.W.2d 124.

Here, Rodriguez lost on direct appeal his current claims regarding DNA evidence allegedly withheld during pre-trial discovery, and denial of access to a Spanish interpreter. Rodriguez also litigated and lost in pre-trial motions in limine issues regarding his ability to question a third party, Pedro Salinas, or expose prior inconsistent statements of another witness, Roy Clancey.<sup>3</sup> A matter once litigated may not be subsequently relitigated "no matter how

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<sup>3</sup> To the extent it could be argued Rodriguez raises new issues regarding Salinas or Clancey, he does not provide a reason for failing to raise these issues on direct appeal.

artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

The only issue we discern that Rodriguez arguably did not previously raise is that while he was awaiting trial the law library available to him was “woefully inadequate.” In any event, Rodriguez provides no reason for his failure to raise these issues in response to the no-merit report. Nor does he allege, much less establish, any defects in the no-merit procedure so as to undermine our confidence in the no-merit proceedings.

Therefore,

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

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*