

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2013

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2012AP2527

Cir. Ct. No. 2006CF147

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID W. DOMKE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Oconto County:
MICHAEL T. JUDGE, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. David Domke, pro se, appeals an order denying his postconviction motion for a directed verdict or, alternatively, for a new trial in the interest of justice. Domke argues the circuit court erred by summarily denying the motion without explanation. We reject Domke's argument and affirm the order.

BACKGROUND

¶2 Domke was convicted upon a jury’s verdict of the repeated sexual assault of a child. On direct appeal, the Wisconsin Supreme Court ultimately affirmed that conviction. *State v. Domke*, 2011 WI 95, ¶3, 337 Wis. 2d 268, 805 N.W.2d 364. Ten months later, Domke filed the underlying motion seeking a directed verdict under WIS. STAT. § 805.14(4)¹ or, alternatively, a new trial in the interest of justice under WIS. STAT. § 805.15(1).

¶3 In his motion, Domke challenged the sufficiency of the evidence to convict him. He also claimed the trial court violated his fair trial right by allowing the victim and other prosecution witnesses to remain in the courtroom during the trial, and by allowing the victim’s father to testify. The circuit court denied the motion the same day it was filed by stamping it “DENIED JUDGE MICHAEL T. JUDGE” and affixing his signature along with the date. This appeal follows.

DISCUSSION

¶4 Domke contends the circuit court violated various federal and state constitutional provisions “and the laws of this State” by failing to articulate its reasons for denying the motion. Domke, however, fails to cite any authority for the proposition that he has a state or federal constitutional right to a statement of reasons for the circuit court’s denial of his postconviction motion. Likewise, Domke fails to specify what state law was violated by the manner in which his

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

motion was denied. This court need not address undeveloped arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

¶5 In any event, we can uphold the circuit court’s decision if facts of record applied to the proper legal standard support the circuit court’s conclusion. *See In re Paternity of Stephanie R. N.*, 174 Wis. 2d 745, 767, 498 N.W.2d 235 (1993). Here, the circuit court lacked authority to provide either of the forms of relief Domke requested. The court could not grant a directed verdict pursuant to WIS. STAT. § 805.14(4) because that section applies only during civil trials to the court. With respect to Domke’s alternative motion, a circuit court lacks authority to grant a new trial in the interest of justice pursuant to WIS. STAT. § 805.15(1) where the motion is “untethered from the normal postconviction motions and appeals process specified” in WIS. STAT. § 974.02 and WIS. STAT. RULE 809.30. *State v. Henley*, 2010 WI 97, ¶65, 328 Wis. 2d 544, 787 N.W.2d 350. As noted above, Domke’s motion was filed long after his direct appeal had ended. We therefore affirm the circuit court’s denial of Domke’s motion, as presented.

¶6 Even if Domke’s filing was liberally construed as a WIS. STAT. § 974.06 motion for postconviction relief, the motion was properly denied without a hearing. The circuit court need not grant a hearing or make findings of fact and conclusions of law if the motion and the files and records of the action conclusively show that the movant “is entitled to no relief.” WIS. STAT. § 974.06(3).

¶7 A motion under WIS. STAT. § 974.06 cannot be used to review issues which were or could have been litigated on direct appeal. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 172, 517 N.W.2d 157 (1994). The statute, however, does not preclude a defendant from raising “an issue of constitutional dimension

which for sufficient reason was not asserted or was inadequately raised in his [or her] original, supplemental or amended postconviction motions.” *Id.* at 184. Here, all of Domke’s issues could have been raised on direct appeal, and his motion fails to present any reason, much less a sufficient one, for failing to raise these issues on direct appeal. *See State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis.2d 568, 682 N.W.2d 433 (sufficiency of defendant’s reason for circumventing *Escalona–Naranjo*’s procedural bar is determined by examining “four corners” of subject postconviction motion). Thus, even when construed as a § 974.06 motion, the court was correct in summarily denying it.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

