

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 26, 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. 2013AP401
STATE OF WISCONSIN**

Cir. Ct. No. 2008CF1358

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CASEY T. GOGOS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
WILLIAM M. ATKINSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Casey Gogos appeals an order denying his WIS. STAT. § 974.06 (2011-12) postconviction motion. The motion raised eleven allegations of ineffective assistance of trial counsel. Because we conclude the motion was procedurally barred, we affirm the order.

¶2 In 2009, Gogos was convicted of first-degree reckless homicide by delivery of heroin and two counts of felony bail-jumping. He had a previous appeal in 2011 in which he argued in part that the State breached an agreement to reduce the homicide charge if Gogos waived his preliminary hearing. This court concluded Gogos forfeited the issue and, in any event, the State did not violate the agreement. In 2013, Gogos filed the present postconviction motion alleging ineffective assistance of trial counsel. The circuit court denied the motion without a hearing.

¶3 The circuit court may deny a postconviction motion without a hearing if the motion fails to raise questions of fact or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. *State v. Allen*, 2004 WI 106, ¶21, 274 Wis. 2d 568, 682 N.W.2d 433. Because Gogos had a previous appeal, his motion must establish “sufficient reason” for his failure to have raised the issues in his earlier postconviction proceeding. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181, 517 N.W.2d 157 (1994). The procedural bar applies to all issues that were raised or could have been raised in the earlier postconviction proceedings. *Id.*

¶4 Gogos alleges the State violated an agreement to reduce the homicide charge. This issue was adjudicated in Gogos’ previous appeal and cannot be relitigated regardless of how artfully the issue is rephrased. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). The remaining ten issues could have been raised in Gogos’ initial postconviction proceedings. Therefore, the issues are procedurally barred unless Gogos can establish sufficient reason for his failure to raise the issues in those earlier proceedings.

¶5 Gogos' present motion does not identify any reason, much less a sufficient reason, for failing to raise these issues in his initial postconviction proceedings. The motion does not even acknowledge the existence of the earlier proceedings. Because the motion does not establish sufficient reason for his failure to raise the issues in the earlier proceedings, the motion was deficient on its face and was properly denied without a hearing.

¶6 Citing *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), Gogos contends the procedural bar cannot be applied by this court because the circuit court did not explicitly utilize that rationale when it denied the motion. The question in *Ylst* was related to federal habeas corpus jurisdiction. *Id.* at 799. The holding does not limit the authority of a state appellate court to apply a procedural bar.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

