

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 19, 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. 2013AP714

Cir. Ct. No. 1990CF902946A

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARCEIA COLEMAN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DAVID A. HANSHER, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Garceia Coleman, *pro se*, appeals an order denying his postconviction motion requesting an evidentiary hearing to pursue claims that he was denied his constitutional rights prior to and during his 1991 jury trial. The circuit court determined that Coleman's claims are barred by *State v. Escalona-*

Naranjo, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and *State v. Tillman*, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. We affirm.

¶2 In 1991, a jury found Coleman guilty of first-degree intentional homicide and robbery, as a party to both crimes. He appealed under the procedures set forth in WIS. STAT. RULE 809.32 (1991-92).¹ His appointed counsel filed a no-merit report, and Coleman filed a response. Following an independent review of the record, the no-merit report, and Coleman's response, we affirmed. See *State v. Coleman*, No. 1992AP0705-CRNM, unpublished slip op. (WI App Dec. 14, 1993) (*Coleman I*).

¶3 In 2009, Coleman filed a postconviction motion pursuant to WIS. STAT. § 974.06 (2009-10). The circuit court concluded that his claims were procedurally barred, and we affirmed. See *State v. Coleman*, No. 2009AP2143, unpublished slip op. (WI App May 11, 2010) (*Coleman II*).

¶4 On January 2, 2013, Coleman filed a document in the circuit court seeking an evidentiary hearing to pursue claims that he has suffered violations of his constitutional right to the effective assistance of counsel. The circuit court denied the motion, and Coleman appeals.

¶5 WISCONSIN STAT. § 974.06 is the mechanism for criminal defendants seeking to raise constitutional and jurisdictional claims after the time for an appeal has passed. See *State v. Henley*, 2010 WI 97, ¶¶50, 52, 328 Wis. 2d 544, 787 N.W.2d 350. Although Coleman did not caption his January 2, 2013

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

filing as a postconviction motion under § 974.06, we examine the substance of a circuit court submission to determine whether a *pro se* prisoner is entitled to relief. See *bin-Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). Here, the substance of Coleman’s circuit court submission is that he suffered violations of his constitutional rights prior to and during his trial. Thus, Coleman raises claims of a kind cognizable under § 974.06. The circuit court, however, correctly determined that the claims are procedurally barred.

¶6 “We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, “[WIS. STAT. §] 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Escalona-Naranjo*, 185 Wis. 2d at 185. The rule is fully applicable when, as here, the prisoner pursued a direct appeal using the no-merit procedure of WIS. STAT. RULE 809.32. See *Tillman*, 281 Wis. 2d 157, ¶¶19-20. Nevertheless, when a defendant pursued a direct appeal under RULE 809.32, this court will not apply the procedural bar to a subsequent claim unless we conclude that “the no[-]merit procedures were in fact followed.” *Tillman*, 281 Wis. 2d 157, ¶20.

¶7 In resolving *Coleman II*, we considered the sufficiency of the no-merit procedures followed in *Coleman I*. See *Coleman II*, No. 2009AP2143, unpublished slip op., ¶¶6, 10. We concluded that Coleman failed to establish a breakdown in the no-merit process that might shake our confidence in the outcome of the proceedings. See *id.*, ¶10. We will not revisit that determination. See *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (matter once litigated may not be relitigated in subsequent postconviction proceeding, no matter how artfully defendant may restate the issue).

¶8 Given our confidence in the procedures followed in *Coleman I*, Coleman must establish a sufficient reason for failing to raise his constitutional claims in his earlier litigation. See *Escalona-Naranjo*, 185 Wis. 2d at 184. To determine the sufficiency of Coleman’s reason for serial litigation, we examine only the four corners of Coleman’s postconviction motion. See *State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

¶9 In the January 2, 2013 submission, Coleman suggested that he did not previously raise his most recent claims because his “appointed appellate counsel, [and his] appointed successor appellate/postconviction counsel provided deficient performance and prejudice as a result of the deficient performance.” Ineffective assistance of the lawyers appointed to represent a defendant in postconviction proceedings may, in some circumstances, serve as a sufficient reason for bringing an additional postconviction motion under WIS. STAT. § 974.06. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). The alleged ineffective assistance of appointed counsel in proceedings ending in 1993, however, is insufficient to justify Coleman’s failure to present and fully develop all of his claims during his *pro se* litigation in 2009.² Because Coleman fails to present a sufficient reason for his serial litigation, we affirm.

² Coleman’s January 2, 2013 circuit court submission includes references to “being found incompeten[t],” but Coleman did not point to anything in the record to support these vague allegations. In his appellant’s brief, he indicates that he was found incompetent as of April 1, 2011, but again, the allegation is not substantiated by anything in the record. Coleman’s conclusory assertions are insufficient to support a postconviction claim. See *State v. Allen*, 2004 WI 106, ¶15, 274 Wis. 2d 568, 682 N.W.2d 433 (motion for postconviction relief requires more than conclusory allegations). Moreover, an allegation of incompetency in 2013, or even in 2011, does not demonstrate that Coleman was unable to raise his claims in response to the no-merit report filed in 1992, or that he was unable to raise any additional claims when he filed his *pro se* postconviction motion in 2009.

By the Court.—Order affirmed.

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

