

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 10, 2014**

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. 2013AP2032**

**Cir. Ct. No. 2008CF418**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANTHONY T. MILLER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for St. Croix County:  
EDWARD F. VLACK III, Judge. *Affirmed.*

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

¶1 PER CURIAM. Anthony Miller, pro se, appeals an order denying reconsideration of the denial of his WIS. STAT. § 974.06<sup>1</sup> motion for

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2011-12 version.

post-conviction relief. Miller raises several challenges to his conviction. To the extent we have jurisdiction to review any claims arising from his reconsideration motion, we conclude they are procedurally barred. We therefore affirm the order.

¶2 Miller was convicted upon his guilty pleas of two counts of possessing child pornography. Out of a maximum possible fifty-year sentence, the court imposed concurrent sentences resulting in five years' initial confinement and ten years' extended supervision. Miller's post-conviction motion for plea withdrawal or resentencing was denied.

¶3 On direct appeal, Miller argued he was entitled to withdraw his pleas because: (1) the plea colloquy failed to define an element of the crime; and (2) the pleas were not knowingly entered based on misinformation provided by his trial counsel. Miller also challenged the circuit court's sentencing discretion. We rejected Miller's arguments and affirmed both the judgment of conviction and the order denying his postconviction motion. *State v. Miller*, No. 2011AP1726-CR, unpublished slip op. (WI App Aug. 14, 2012).

¶4 Miller then filed a WIS. STAT. § 974.06 motion asserting the following grounds for relief:

(1) no evidence exists, and none was introduced to support a conviction for the offense charged; (2) the failure of the court to establish a factual basis, on the record, thereby failing to meet the constitutional standard required; (3) an element was missing from the plea questionnaire and charging documents; (4) no waiver was obtained of my right to appeal, thus violating the Constitution; (5) the violation of my 6th Amendment right to a jury trial on the missing element; (6) the court was without jurisdiction to impose sentence because the complaint was void and filing of the complaint without sufficient evidence to support a conviction violates due process; (7) the infringement of my right against self-incrimination under the United States and Wisconsin Constitutions; (8) the search warrant issued by a

court without jurisdiction to do so; and (9) the abridgment of rights guaranteed by the constitutions and laws of this state and the United States, including a right that was not recognized as existing at the time of the original action.

In an order entered May 14, 2013, the court denied Miller's motion, rejecting his challenge to the factual basis for his guilty pleas on the merits, and further determining that Miller's pleas had waived his right to challenge the validity of the search warrant.<sup>2</sup> The court alternatively determined that Miller's search warrant challenge, along with his remaining claims, were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994).

¶5 Miller moved for reconsideration, reasserting: (1) there was no evidence to support his conviction; (2) the State failed to meet its burden to establish every element of the crime; and (3) there was no factual basis for the pleas. In an order entered October 8, 2013, the circuit court denied reconsideration. The court concluded that the motion had not presented any new arguments but, rather, took issue "with certain elements of this court's decision and disagree[d] with the court's application of law." The court added that Miller's reconsideration motion "merely reformulate[d] arguments that he raised during this court's initial consideration of his original [WIS. STAT.] § 974.06 motion."

¶6 On September 3, 2013, Miller filed a notice of appeal from both the order denying his WIS. STAT. § 974.06 motion for post-conviction relief and the

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<sup>2</sup> The general rule is that a valid guilty plea waives all nonjurisdictional defects and defenses, including alleged violations of constitutional rights prior to the plea. *State v. Riekkoff*, 112 Wis. 2d 119, 123, 332 N.W.2d 744 (1983) (citing *Hawkins v. State*, 26 Wis. 2d 443, 448, 132 N.W.2d 545 (1965)). The sole exception to that rule is contained in WIS. STAT. § 971.31(10), which preserves a defendant's right to appeal the denial of a suppression motion. The circuit court applied the guilty-plea-waiver rule in this case because the suppression motion was never decided.

order denying his reconsideration motion. By orders dated October 28, 2013 and November 11, 2013, we concluded that we lacked jurisdiction to review the order denying Miller's § 974.06 motion because he failed to timely file his notice of appeal. *See* WIS. STAT. RULE 809.10(1)(e). Our jurisdiction in this appeal is, therefore, limited to reviewing only the order denying reconsideration, and only to the extent Miller's reconsideration motion raised issues not addressed in the order from which reconsideration was sought. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988) (appeal cannot be taken from order denying reconsideration motion that presents same issues as those determined in order sought to be reconsidered).

¶7 Here, Miller's reconsideration motion did not raise new issues readily distinguishable from those raised in his WIS. STAT. § 974.06 motion. He merely repackaged some of the same arguments. As noted above, our jurisdiction is limited to reviewing only those issues not addressed in the order from which reconsideration was sought. *See Silvertown Enters.*, 143 Wis. 2d at 665. Miller nevertheless contends that all of his issues were not actually addressed by the order denying his § 974.06 motion. We disagree. After identifying the nine issues Miller raised, the court disposed of some arguments on their merits and determined that the remaining claims were procedurally barred by *Escalona-Naranjo*.

¶8 To the extent any "new" claims could be discerned from Miller's reconsideration motion, they are likewise procedurally barred under *Escalona-Naranjo*. That case stands for the proposition that "due process for a convicted defendant permits him or her a single appeal of that conviction and a single opportunity to raise claims of error." *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Thus, claims that could have

been raised on direct appeal or by prior motion are barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the claims earlier. See *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Miller provides no reason, much less a sufficient reason, for failing to raise his claims in prior postconviction proceedings.<sup>3</sup>

*By the Court.*—Order affirmed.

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

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<sup>3</sup> After briefing was completed, Miller submitted a “citation of supplemental authorities” asking this court to take notice of *State v. Ahlman*, No. 2013AP551-CR, unpublished slip op. (WI App Oct. 15, 2013). Miller asserts that the *Ahlman* case is “contrary to the decision rendered” in Miller’s direct appeal and has “a direct bearing” on his present challenge to the factual basis for his pleas. *Ahlman*, however, is distinguishable on its facts. In any event, we lack jurisdiction to reconsider Miller’s direct appeal and, as noted above, we lack jurisdiction to review the order denying his challenge to the factual basis for his pleas.

