

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2017

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. 2016AP811

Cir. Ct. No. 2012CF5119

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ERIC G. PERKINS,

DEFENDANT-APPELLANT.

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

Before Brennan, P.J., Brash and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Eric G. Perkins appeals an order denying his collateral postconviction motion to withdraw his guilty pleas to second-degree

reckless homicide and second-degree recklessly endangering safety, both as a party to a crime and with use of a dangerous weapon. We conclude that Perkins' claim is procedurally barred under WIS. STAT. § 974.06 (2015-16),¹ and *State v. Escalona-Naranjo*, 185 Wis.2d 168, 181-82, 517 N.W.2d 157 (1994). Accordingly, we affirm.

¶2 Perkins pled guilty to the charges pursuant to a plea agreement. He was sentenced to an aggregate term of thirty-one years of imprisonment. After sentencing, Perkins moved for postconviction relief, arguing that he had been sentenced based on inaccurate information about his criminal history. The circuit court denied the motion. On appeal, we affirmed the judgment of conviction and the order denying postconviction relief. Perkins then filed this collateral attack on his conviction seeking plea withdrawal. The circuit court denied the motion.

¶3 A defendant who has filed a previous postconviction and/or appellate challenge to his conviction “is barred from making a claim that could have been raised previously unless he shows a sufficient reason for not making the claim earlier.” *State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668; *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Perkins' motion states that he had a sufficient reason for not previously raising his current argument because “ineffective assistance of Post-Conviction Counsel may overcome the *State v. Escalona-Naranjo* [] bar.”

¶4 To show that Perkins had a sufficient reason for not previously raising his claim based on ineffective assistance of counsel, Perkins was required

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

to allege facts that, if true, would show that: (1) his postconviction counsel performed deficiently; and (2) the deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (a defendant is entitled to an evidentiary hearing on a postconviction claim if he “alleges sufficient material facts that, if true, would entitle the defendant to relief”). Perkins’ conclusory one-sentence argument wholly fails to allege specific facts that, if true, would establish that counsel provided him with constitutionally ineffective representation. Perkins attempts to rectify his inadequate pleading by fleshing it out a bit on appeal. This he may not do. A defendant must allege facts that, if true, would entitle him to relief “within the four corners of the [postconviction motion] itself.” *Allen*, 274 Wis. 2d 568, ¶23. Therefore, we conclude that Perkins’ claim is barred by *Escalona-Naranjo* because he has not shown a sufficient reason for failing to previously raise his claim.

By the Court.—Order affirmed.

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

