

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**October 23, 2001**

Cornelia G. Clark  
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.

**No. 01-0480-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**DONALD MINNIECHESKE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Shawano County:  
EARL W. SCHMIDT, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Donald Minniecheske appeals pro se from an order denying his WIS. STAT. § 974.06 motion seeking postconviction relief. Because Minniecheske failed to provide a sufficient reason explaining why he did not raise the issues in his original postconviction motion or his previous § 974.06

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

motion, we conclude that Minniecheske's claims are procedurally barred by § 974.06(4) and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Therefore, we affirm the trial court's order.

## BACKGROUND

¶2 Initially, we note that Minniecheske's briefs are extremely difficult to understand. He presents rambling accounts of the trial and postconviction proceedings with numerous conclusory claims. His arguments, to the extent they exist, are nearly incomprehensible. We are not required to consider undeveloped arguments. *Truttschel v. Martin*, 208 Wis. 2d 361, 369, 560 N.W.2d 315 (Ct. App. 1997). Further, we note that this appears to be yet another in a series of attacks on Minniecheske's judgment of conviction. Nevertheless, we have reviewed the record and address Minniecheske's arguments as nearly as we can decipher them.

¶3 In 1996, Minniecheske was convicted of disorderly conduct, contrary to WIS. STAT. § 947.01(1). On appeal, he argued that his actions did not rise to the level of disorderly conduct. We affirmed his conviction. The Wisconsin Supreme Court subsequently denied Minniecheske's petition for review.

¶4 On May 13, 1998, Minniecheske brought a WIS. STAT. § 974.06 motion seeking a new trial based on ineffective assistance of counsel. The trial court concluded that the issue could have been raised on direct appeal and dismissed the motion. Minniecheske appealed but later voluntarily dismissed the appeal. Then Minniecheske filed numerous petitions for writs of habeas corpus and motions for reconsideration in the trial court and the appellate court.

¶5 On May 30, 2000, Minniecheske moved the trial court to vacate his conviction and requested a new trial based on “new factors.” On July 31, 2000, the clerk of the circuit court entered an order denying the motion under WIS. STAT. RULE 809.30(2)(i) because it was not decided within sixty days. Minniecheske appealed.<sup>2</sup>

¶6 On November 30, 2000, we summarily reversed the order dismissing Minniecheske’s motion. We concluded that Minniecheske’s motion was not a motion under WIS. STAT. RULE 809.30 and therefore could not be deemed denied after sixty days. We remanded for further proceedings.

¶7 On remand, the trial court determined that Minniecheske’s motion was brought under WIS. STAT. § 974.06. The court denied his motion based on the May 13, 1998, dismissal of his previous § 974.06 motion. This appeal followed.

#### STANDARD OF REVIEW

¶8 We independently review whether claims are procedurally barred. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

#### DISCUSSION

¶9 Minniecheske argues that he has evidence of prosecutorial misconduct, and perjured and hearsay testimony that were used to falsely convict

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<sup>2</sup> On August 10, 2000, Minniecheske moved the trial court for reconsideration of the motion to vacate his conviction and request for a new trial. On October 9, 2000, the clerk of the circuit court again entered an order denying the motion to reconsider under WIS. STAT. RULE 809.30 because it was not decided within 60 days. The motion to reconsider does not appear to be the subject of this appeal.

him. He contends that these “new factors” were not raised in any of his prior appeals. Therefore, he requests an evidentiary hearing.

¶10 Because this is not a direct appeal, we construe Minniecheske’s motion, as did the trial court, as a motion under WIS. STAT. § 974.06. Therefore, several general principles govern our review of his claims. Section 974.06(4) requires criminal defendants to raise all postconviction claims in one motion or appeal. *Escalona-Naranjo*, 185 Wis. 2d at 178-79. This procedural bar effectively prohibits “[s]uccessive motions and appeals, which all could have been brought at the same time ....” *Id.* at 185. Issues that have already been adjudicated, waived, or not raised in a prior postconviction motion cannot be raised in a § 974.06 motion unless there is sufficient reason for failing to raise them in the original, supplemental or amended motion. *Id.* at 181-82.

¶11 The trial court denied the motion based on WIS. STAT. § 974.06(4) and *Escalona-Naranjo* because Minniecheske failed to provide a sufficient reason explaining why he did not raise the issues in the original motion. We affirm the trial court on the same basis.

¶12 Minniecheske does not dispute the trial court’s characterization of his motion as one brought under WIS. STAT. § 974.06. Nor does he dispute the trial court’s decision that he did not provide a sufficient reason for failing to raise the issues in the previous § 974.06 motion. In fact, he does not address the basis for the trial court’s decision. Rather, he just asserts that because he has not been heard on these issues, he can raise them now.

¶13 Minniecheske failed to raise these “new factors” on his direct appeal or in his first postconviction motion under WIS. STAT. § 974.06. He has not

offered any reason why he failed to raise this claim in the first postconviction motion. *See Escalona-Naranjo*, 185 Wis. 2d at 184-85.

¶14 The need for finality compels a defendant to raise all grounds regarding postconviction relief in his or her original motion. Successive motions and appeals, which could have been brought originally, run counter to the design and purpose of postconviction motions. *Id.* at 183-84; WIS. STAT. § 974.06.

¶15 We conclude that Minniecheske failed to establish a sufficient reason for not including his “new factors” in his original motion. Therefore, the order denying the motion is affirmed.

*By the Court.*—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)(4).

