COURT OF APPEALS
DECISION
DATED AND FILED

August 14, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2616 **Cir. Ct. No. 1996CF960079**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CORNELIUS RAMON MADDOX,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Cornelius Ramon Maddox appeals from an order denying his motion for postconviction relief. The issue is whether the alleged ineffective assistance of trial, postconviction and appellate counsel constitutes a sufficient reason to entertain a postconviction motion seeking plea withdrawal or

to reinstate Maddox's direct appeal rights. We conclude that Maddox has not alleged a sufficient reason to overcome the procedural bar of ***State v. Tillman***, 2005 WI App 71, ¶¶25-27, 281 Wis. 2d 157, 696 N.W.2d 574, by alluding to his unfamiliarity with the law and the alleged ineffective assistance of counsel. Therefore, we affirm.

¶2 Maddox pled guilty to one count of armed robbery and two counts of false imprisonment while armed, as a party to each crime. The trial court imposed a forty-three-year aggregate sentence. Maddox, then represented by counsel, moved for postconviction plea withdrawal pursuant to WIS. STAT. RULE 809.30 (amended July 1, 1996). The trial court summarily denied the motion.

¶3 Appellate counsel filed a no-merit appeal. Maddox elected not to respond to appellate counsel's no-merit report. Following our independent review of the record, we affirmed the judgment of conviction and the postconviction order denying Maddox's plea withdrawal motion. *See* ***State v. Maddox***, No. 97-0690-CRNM, unpublished slip op. at 1-2 (Wis. Ct. App. July 21, 1997). In our order, we confirmed that Maddox had not alleged why he would have pled differently or preferred proceeding to trial on the six counts charged, or how he was prejudiced by the claimed deficiencies in the plea colloquy. *See* ***id.*** at 2-4.

¶4 Almost ten years later, Maddox filed a second motion for plea withdrawal, this time proceeding *pro se*, pursuant to WIS. STAT. § 974.06 (2005-06).[1] He claimed that he raised different issues than he raised previously. These "new" issues are closely related to if not the same as those issues he raised ten

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

years earlier. Maddox also alleged in this motion, that he is entitled to plea withdrawal predicated on the ineffective assistance of trial, postconviction and appellate counsel. He claimed that his trial counsel misled him during plea negotiations. He claimed that postconviction counsel was ineffective in representing him on the previous plea withdrawal motion. He claimed that appellate counsel was ineffective for not properly pursuing the same plea withdrawal issues in a conventional appeal that she pursued in postconviction proceedings. The trial court summarily denied the motion as procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) and ***Tillman***, which extended ***Escalona***'s procedural bar to no-merit appeals. *See* ***Tillman***, 281 Wis. 2d 157, ¶27. Maddox appeals.

¶5 To avoid ***Escalona***'s procedural bar, Maddox must allege a sufficient reason for failing to have previously raised all grounds for postconviction relief on direct appeal or in his original postconviction motion. *See* ***Escalona***, 185 Wis. 2d at 185-86. Whether ***Escalona***'s procedural bar applies to a postconviction claim is a question of law entitled to independent review. *See* ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). We extended ***Escalona***'s applicability to postconviction motions following no-merit appeals. *See* ***Tillman***, 281 Wis. 2d 157, ¶27. Before applying ***Tillman***'s procedural bar, however, both the trial and appellate courts "must pay close attention to whether the no merit procedures were in fact followed. In addition, the court must consider whether that procedure, even if followed, carries a sufficient degree of confidence warranting the application of the procedural bar under the particular facts and circumstances of the case." ***Id.***, ¶20 (footnote omitted). "[A] prior no merit appeal may serve as a procedural bar to a subsequent

postconviction motion and ensuing appeal which raises the same issues or other issues that could have been previously raised." ***Id.***, ¶27.

¶6 Maddox alludes to the ineffective assistance of his various counsel during plea negotiations and in his first postconviction motion, coupled with his unfamiliarity with the law, for failing to respond to the no-merit report as his reasons for having failed to previously or adequately raise these "new" albeit related issues.[2] Even if we were to construe these reasons as responding to the "sufficient reason" requisite of ***Tillman***, they are insufficient to overcome its procedural bar. *See* ***Tillman,*** 281 Wis. 2d at 157, ¶¶25-27.

¶7 Insofar as his alleged unfamiliarity with the law is concerned, many defendant-appellants in a no-merit appeal are not knowledgeable in the law. They are eligible for appointed counsel, and frequently characterize counsel's pursuit of a no-merit appeal as ineffective assistance. These are precisely the reasons that the defendant-appellant need only identify his or her criticisms in a no-merit response, rather than being obliged to comply with the formal briefing rules governing an adversary appeal. *See* ***Anders v. California***, 386 U.S. 738, 744-45 (1967); ***Tillman***, 281 Wis. 2d 157, ¶¶16-18. These are precisely the reasons the

[2] The ineffectiveness of appellate counsel is not properly raised in a postconviction motion pursuant to WIS. STAT. § 974.06, but must be raised in a habeas corpus petition filed in the same appellate court that decided the underlying appeal. *See* ***State v. Knight***, 168 Wis. 2d 509, 522, 484 N.W.2d 540 (1992).

Maddox also contends that ***Page v. Frank***, 343 F.3d 901, 907 (7th Cir. 2003), excuses him from ***Escalona***'s procedural bar. *See* ***Page***, 343 F.3d at 907. Maddox is mistaken. ***Page*** explains that ***Escalona***'s procedural bar does not affect the availability of federal habeas corpus relief to state prisoners; it does not address ***Escalona***'s applicability to issues raised by state prisoners seeking collateral review of state court judgments, as is the case here. *See* ***Page***, 343 F.3d at 907.

appellate court affords a more comprehensive review to a no-merit appeal, where we independently review the record to search for every arguably meritorious issue, than we afford a conventional appeal, where we only decide the issues appellant properly raises and adequately briefs. *See* ***Tillman***, 281 Wis. 2d 157, ¶¶15-18. As we explained:

> This procedure demonstrates that, in some facets, the no merit procedure affords a defendant greater scrutiny of a trial court record and greater opportunity to respond than in a conventional appeal. As with a conventional appeal, appellate counsel examines the trial court record for potential appellate issues. However, the defendant in a conventional appeal does not receive the benefit of a skilled and experienced appellate court also examining the record for issues of arguable merit. Instead, the court's role in a conventional appeal is limited to addressing the issues briefed by appellate counsel. Nor, as a general rule, is the defendant in a conventional appeal permitted to separately weigh in by raising objections to counsel's brief or by raising additional issues [as is permissible in a no-merit response].

Id., ¶18. Consequently, Maddox's unfamiliarity with the law resulting in his failure to respond to the no-merit report does not distinguish him from many other defendant-appellants in no-merit appeals and is not a sufficient reason to overcome ***Tillman***'s procedural bar.

¶8 Insofar as counsels' alleged ineffectiveness is concerned, we independently examined the record, most specifically the transcript of the guilty plea hearing, which essentially belied most of Maddox's allegations of ineffectiveness against trial counsel, on whose ineffectiveness the claims against postconviction and appellate counsel depend. We independently concluded that further proceedings to challenge Maddox's guilty pleas would lack arguable merit. *See* ***Maddox***, No. 97-0690-CRNM, unpublished slip op. at 4. Maddox's reasons

for failing to raise his plea withdrawal issues previously are not sufficient to supersede our previous decision rejecting similar issues.

¶9 We conclude that in Maddox's no-merit appeal, the proper procedures were followed and that the outcome carried a sufficient degree of confidence to warrant applying ***Tillman***'s procedural bar to Maddox's current postconviction motion attempting to re-litigate plea withdrawal. In ***Tillman***, we contemplated the lack of knowledge of the law of a defendant-appellant in a no-merit appeal. *See also* ***Anders***, 386 U.S. at 744-45. Apart from his unfamiliarity with the law and counsels' ineffectiveness, Maddox has not explained his ten-year delay in raising these plea withdrawal and derivative ineffective assistance issues, many of which we have already litigated. Consequently, he has not overcome ***Tillman***'s procedural bar.

By the Court.—Order affirmed.

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