

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 8, 2007

David R. Schanker
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 Nos. 2006AP2945
2006AP2946
2006AP2947
2006AP2948
2006AP2949
2006AP2950
2006AP2951
2006AP2952**

**Cir. Ct. Nos. 2002CM1294
2002CF623
2002CF739
2002CF803
2003CF55
2003CF80
2003CF219
2003CF220**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEREMY M. WINE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County:
JOHN J. PERLICH, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Bridge, JJ.

¶1 PER CURIAM. Jeremy Wine appeals from an order denying his latest motions for DNA testing and other postconviction relief in eight cases that were handled together pursuant to a joint plea agreement. We affirm for the reasons discussed below.

BACKGROUND

¶2 On June 13, 2003, Wine entered guilty pleas to one count of battery, three counts of uttering a forged document, one count of issuing worthless checks, one count of obstruction of justice, one count of second-degree sexual assault, one count of felony bail jumping, one count of burglary, one count of theft, two counts of battery by a prisoner, and two counts of threat to injure — all as a repeat offender. On August 22, 2003, the circuit court sentenced Wine to consecutive sentences that totaled fifty-one years of initial confinement and forty-one years of extended supervision.

¶3 On October 31, 2005, Wine filed a postconviction motion seeking to either set aside his sentences or make them concurrent on the grounds that the trial court had not properly explained why it was imposing consecutive sentences that Wine might not even live to fully serve. On November 8, 2005, Wine filed another motion seeking to withdraw his pleas on the grounds that he had been coerced into entering them by counsel's ineffective assistance and Wine's conditions of confinement in jail. The trial court denied both motions without a hearing, concluding that the allegations were conclusory and the record demonstrated no basis for the requested relief.

¶4 On November 16, 2006, Wine filed yet another postconviction motion under WIS. STAT. § 974.06 (2005-06),¹ along with a motion for DNA testing under WIS. STAT. § 974.07. The § 974.06 motion contained numbers of individual claims and assertions, arranged into the following categories: (1) Wine's pleas were not entered knowingly; (2) the pleas were involuntary; (3) the pleas were unintelligent; (4) the trial court failed to give an adequate reason for imposing consecutive sentences, particularly when maximum sentences were not given; (5) the trial court made numerous errors throughout the proceedings, including allowing Wine to represent himself and making observations about the defendant's competence; (6) the prosecutor engaged in assorted acts of misconduct; (7) Wine was forced to represent himself due to the ineffective assistance of counsel, and the court was not authorized to appoint standby counsel against his wishes; (8) the charges were multiplicitous; (9) the trial court violated Wine's due process rights by failing to hold hearings on any of the motions he filed prior to entering his pleas; (10) Wine did not knowingly sign documents at his plea hearing consolidating the cases, waiving his preliminary hearing, waiving his right to trial, and waiving counsel; (11) the proper procedures for determining Wine's competency were not followed, and Wine was mentally ill when he waived his rights; (12) the conviction was manifestly unjust for assorted reasons including a lack of any factual basis for the charges or Wine's status as a habitual offender and the lack of an independent PSI to establish the facts; (13) the court lacked subject matter and personal jurisdiction over Wine; (14) the statements by the victims and witnesses were too inconsistent to be credible; (15) the court

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

improperly relied on the complaints and Wine's acknowledgement that the allegations were "pretty much true" as a factual basis for the pleas; (16) Wine was not advised of all the consequences of entering his pleas; (17) the State failed to turn over discovery materials; (18) the police improperly called everyone in Wine's address book to solicit information about possible crimes he had committed; (19) the court ignored Wine's complaints that he was being threatened and coerced into entering pleas to escape tortuous conditions of confinement; (20) the transcripts show Wine was becoming frustrated and overwhelmed by his conditions of confinement; (21) the prosecutor improperly bribed witnesses against Wine by offering leniency in their own cases; and (22) the court lost competency to proceed by failing to hold a competency hearing within fourteen days after ordering an evaluation. The trial court denied both the § 974.06 and § 974.07 motions without a hearing, noting that it had already ruled on some of the claims in its prior postconviction order and that the rest were again conclusory. Wine appeals.

DISCUSSION

¶5 The State argues that all of the claims in Wine's most recent WIS. STAT. § 974.06 motion are procedurally barred because he failed to demonstrate an adequate reason for failing to raise them in his earlier postconviction motions. We agree.

¶6 WISCONSIN STAT. § 974.06(1) permits a defendant to challenge a sentence

upon the ground that the sentence was imposed in violation of the U.S. constitution or the constitution or laws of this state, that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the

maximum authorized by law or is otherwise subject to collateral attack

after the time for seeking a direct appeal or other postconviction remedy has expired. Section 974.06(4) limits the use of this postconviction procedure, however, in the following manner:

All grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

The purpose of subsection (4) is “to require criminal defendants to consolidate all their postconviction claims into one motion or appeal.” *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994). Successive motions and appeals, including those raising constitutional claims, are procedurally barred unless the defendant can show a “sufficient reason” why the newly alleged errors were not previously or adequately raised. *Id.* at 185. Furthermore, issues that have already been considered cannot be raised in a subsequent motion for relief under § 974.06. See *State v. Rohl*, 104 Wis. 2d 77, 96, 310 N.W.2d 631 (Ct. App. 1981).

¶7 The WIS. STAT. § 974.06 motion Wine filed in 2006 was based entirely upon allegations that should have been well known to him at the time of his original conviction. Some of those claims — such as his challenges to the consecutive imposition of the sentences and his contention that he was coerced into entering pleas because he could not tolerate the conditions of his confinement

in jail — were in fact already litigated in his prior postconviction motions, and Wine has provided no sufficient reason why he could not have consolidated the rest of his current claims in his prior motions.

¶8 We turn then to Wine’s motion under WIS. STAT. § 974.07. That section provides in relevant part:

(2) At any time after being convicted of a crime, adjudicated delinquent, or found not guilty by reason of mental disease or defect, a person may make a motion in the court in which he or she was convicted, adjudicated delinquent, or found not guilty by reason of mental disease or defect for an order requiring forensic deoxyribonucleic acid testing of evidence to which all of the following apply:

(a) The evidence is relevant to the investigation or prosecution that resulted in the conviction, adjudication, or finding of not guilty by reason of mental disease or defect.

(b) The evidence is in the actual or constructive possession of a government agency.

(c) The evidence has not previously been subjected to forensic deoxyribonucleic acid testing or, if the evidence has previously been tested, it may now be subjected to another test using a scientific technique that was not available or was not utilized at the time of the previous testing and that provides a reasonable likelihood of more accurate and probative results.

The court shall order such testing at public expense only if, in addition to the above criteria, the defendant asserts that he is innocent, the chain of custody of the evidence is intact, and:

It is reasonably probable that the movant would not have been prosecuted, convicted, found not guilty by reason of mental disease or defect, or adjudicated delinquent for the offense at issue in the motion under sub. (2), if exculpatory deoxyribonucleic acid testing results had been available before the prosecution, conviction, finding of not guilty, or adjudication for the offense.

Section 974.07(7)(a).

¶9 Wine asserted his innocence and asked for testing of “physical evidence and clothing articles” relating to the sexual assault charge. Although he did not specify what those articles were, he has attached to his brief a copy of a letter from the State Crime Laboratory indicating that “evidence was returned to La Crosse Police Department untested because of a plea.” We therefore infer that evidence of some nature was collected from the victim, and may still remain in the custody of the State.

¶10 However, we agree with both the trial court and the State that Wine failed to make sufficient allegations to show that it is “reasonably probable” that Wine would not have been prosecuted or convicted of the sexual assault charge if exculpatory DNA testing results had been available.

¶11 The sexual assault charges were based on allegations that Wine had followed a seventeen-year-old girl into the bathroom at his house and tried to make her masturbate him, perform oral sex on him, and have vaginal and anal sex with him. He put his fingers into her vagina, but she struggled and he was not able to insert his penis into her vagina or anus and did not ejaculate.

¶12 Because the allegations were made by someone who knew Wine, this was not a situation in which DNA was required to identify the victim’s alleged assailant. Furthermore, because the victim did not allege that Wine had either penetrated her or ejaculated, there would not have been a high expectation of recovering semen from the victim or her clothing. Therefore, the absence of any such evidence would not have had much probative weight in this case. Instead, this was a credibility case, and there is no reason to believe that the State would

not have pressed forward with the case and succeeded in obtaining a conviction even if DNA tests had come back negative.

By the Court.—Order affirmed.

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

