

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2008

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 No. 2006AP2996-CR

Cir. Ct. No. 2001CF4199

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DONALD WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Donald Williams appeals from the order denying his motion to modify his sentence.¹ Williams appears to be arguing that his

¹ In the circuit court, Williams labeled his motion as being brought under WIS. STAT. § 973.19. This was not correct. It was a motion under WIS. STAT. § 974.06 (2005-06).

sentence was excessive because he had not been convicted in the past fifteen years. Because we conclude that this motion was barred by the doctrine of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), we affirm.

¶2 In 2001, Williams pled guilty to burglary of a patient’s hospital room. The court sentenced him to ten years of initial confinement and three years of extended supervision. At the sentencing hearing, Williams objected to one of the prior convictions listed in the presentence investigation report, but did not deny that he had 187 arrests and multiple convictions for similar incidents.

¶3 Williams, by counsel, brought a motion for postconviction relief alleging that his sentence was harsh and excessive. The circuit court denied the motion stating that it had considered the appropriate factors, including that this was Williams’ 187th arrest, and that the crime was one of “preying upon vulnerable people in hospitals.” Williams appealed, his counsel filed a no-merit report, and we affirmed.

¶4 Williams, acting *pro se*, filed a second motion for postconviction relief. The circuit court denied the motion, Williams appealed, and then voluntarily withdrew the appeal. He then filed a petition for a writ of *habeas corpus* in the circuit court, which was dismissed. He filed a petition for a writ of *habeas corpus* in this court. We also dismissed the petition, noting that the petition was virtually unintelligible. In November 2006, Williams filed the motion that is the subject of this appeal.

¶5 We conclude that Williams’ claim is barred by *Escalona-Naranjo*. In *Escalona-Naranjo*, 185 Wis. 2d at 185, the supreme court stated:

We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

¶6 A defendant must raise all grounds for relief in his original supplemental or amended motion for postconviction relief. *Id.* at 181. If a defendant's grounds for relief have been finally adjudicated, waived, or not raised in a prior postconviction motion, they may not become the basis for a new postconviction motion, unless there is a sufficient reason for the defendant's failure to allege or adequately raise the issue in the original motion. *Id.* at 181-82. And in *State v. Tillman*, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 547, this court held that "when a defendant's postconviction issues have been addressed by the no merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in that previous motion, absent the defendant demonstrating that a sufficient reason for failing to raise those issues previously." *Tillman*, 271 Wis. 2d 157, ¶19 (citation omitted).

¶7 In the circuit court's order denying his motion, the circuit court stated that the basis for Williams' claim was that the sentencing court had relied on inaccurate information about his prior convictions and, therefore, the court violated his constitutional rights. Although Williams' brief to this court is again fairly incomprehensible, this appears to be the issue he is arguing. We conclude that this is an argument that Williams could have raised in his direct appeal or in his first motion for postconviction relief. He has not offered any reason why he did not raise the issue in his previous appeals. Consequently, he is barred from

raising this claim now. We affirm the order of the circuit court denying his motion.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

