

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 4, 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 No. 2006AP3183

Cir. Ct. No. 2001CF5732

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ERIC D. WOODS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Eric D. Woods appeals, *pro se*, from an order denying his third postconviction motion, and from an order denying his related motion for reconsideration. The circuit court concluded that Woods's claims are

barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We affirm.

Background

¶2 Woods pled guilty in January 2002, to one count of burglary as party to a crime. *See* WIS. STAT. §§ 943.10(1)(a), 939.05 (1999-2000). The circuit court imposed a ten-year term of imprisonment, bifurcated as five years of initial confinement and five years of extended supervision. The court stayed the sentence and placed Woods on probation for five years. Woods did not appeal.

¶3 The Department of Corrections revoked Woods's probation in August 2003, and ordered him imprisoned. In April 2005, Woods filed his first postconviction motion, seeking sentence modification on the grounds that his diagnosis of schizophrenia, coupled with his other mental health disorders, constituted a new factor. The circuit court denied relief and Woods did not appeal.

¶4 In October 2005, Woods filed his second postconviction motion. Pursuant to WIS. STAT. § 974.06 (2003-04), he sought a new trial on the grounds that his trial counsel was ineffective. Alternatively, he renewed his request for sentence modification. The circuit court denied the motion and Woods did not appeal.

¶5 In October 2006, Woods initiated the instant litigation by filing his third postconviction motion. Pursuant to WIS. STAT. § 974.06, he moved to withdraw his guilty plea on multiple grounds, or, in the alternative, to modify his sentence. The circuit court held that Woods was required to raise all grounds for postconviction relief in his original postconviction motion or assert a sufficient reason for failing to do so. *See Escalona-Naranjo*, 185 Wis. 2d at 185. Finding

that Woods had not asserted any reason for failing to raise his claims in earlier proceedings, the court denied the motion.

¶6 Woods moved for reconsideration. He contended both that he was incompetent in earlier postconviction proceedings and that he had newly-discovered evidence, and that either was a sufficient reason to relieve him from the procedural bar of *Escalona-Naranjo*. The circuit court rejected Woods's contentions. It found nothing in the record supporting Woods's assertion that he was incompetent at any time subsequent to his plea and sentencing. It further found that Woods's newly-discovered evidence claim had been asserted in support of a prior postconviction motion. The court therefore denied Woods's motion for reconsideration and this appeal followed.

Discussion

¶7 “We need finality in our litigation.” *Id.* at 185. A defendant is therefore barred from pursuing claims in a subsequent appeal that could have been raised in an earlier postconviction motion or direct appeal unless the defendant provides a “sufficient reason” for not raising the claims previously. *Id.* at 181-82.

¶8 Incompetency during postconviction proceedings may be a sufficient reason to permit a subsequent postconviction motion. See *State v. Debra A.E.*, 188 Wis.2d 111, 135-36, 523 N.W.2d 727 (1994). “Defendants who are incompetent at the time they seek postconviction relief should, after regaining competency, be allowed to raise issues at a later proceeding that could not have been raised earlier because of incompetency.” *Id.* at 135. Incompetency in the postconviction context is an inability “to assist counsel or to make decisions committed by law to the defendant with a reasonable degree of rational

understanding.” *Id.* at 126 (discussing incompetency for purposes of pursuing postconviction relief under WIS. STAT. § 809.30 (1991-92)).

¶9 *Debra A.E.* does not permit Woods to pursue his current motion because the circuit court found no reason to doubt Woods’s competency at the time of his earlier postconviction litigation. Whether there is a reason to doubt competency is generally a question of fact for the circuit court, and we will uphold the court’s finding unless it is clearly erroneous. *See State v. Haskins*, 139 Wis. 2d 257, 264-65, 407 N.W.2d 309 (Ct. App. 1987).

¶10 The record supports the circuit court’s finding. While the treatment notes and reports filed in support of Woods’s motions reflect that he has received various diagnoses for mental health disorders since his conviction, a diagnosis of mental illness is not a categorical reason to doubt competency. *See State v. Farrell*, 226 Wis. 2d 447, 454-55, 595 N.W.2d 64 (Ct. App. 1999). “A person is not incompetent simply because he or she is not in good mental health or because he or she has thoughts that a mature, healthy individual would not have. Many mentally ill persons are competent to proceed.” *State v. Byrge*, 225 Wis. 2d 702, 713 n.3, 594 N.W.2d 388 (Ct. App. 1999), *aff’d*, 2000 WI 101, 237 Wis. 2d 197, 614 N.W.2d 477.

¶11 Psychiatric reports prepared just before and just after Woods submitted his first postconviction motion in April 2005, describe Woods as “alert and oriented.” They reflect diagnoses of posttraumatic stress disorder, polysubstance dependence, and borderline personality disorder. Neither these reports nor other materials in the record documenting Woods’s treatment after his conviction reflect a reason to doubt his competency during postconviction proceedings. The circuit court’s conclusion that Woods failed to make a showing

of incompetency during the time following his plea and sentencing is not clearly erroneous.

¶12 We further agree with the circuit court’s determination that Woods’s third postconviction motion is not based on newly discovered evidence. Woods’s evidence consists of correspondence from his mother, one of the two complaining witnesses in the case, recanting some of her allegations. Woods filed a previous postconviction motion seeking relief on the basis of recantations from the two complaining witnesses. “To prevail on a claim of newly discovered evidence, a defendant must first prove by clear and convincing evidence that ... ‘the evidence is not merely cumulative.’” *State v. Love*, 2005 WI 116, ¶43, 284 Wis. 2d 111, 700 N.W.2d 62 (citations omitted). The proffered “newly discovered evidence” here is cumulative to evidence previously submitted and therefore insufficient to warrant relief.

By the Court.—Orders affirmed.

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

