

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 12, 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. 2007AP2795

Cir. Ct. No. 2000CF2839

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DAVID E. BOWERS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
M. JOSEPH DONALD, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer¹ and Kessler, JJ.

¹ This opinion was circulated and approved before Judge Wedemeyer's death.

¶1 PER CURIAM. David E. Bowers, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 (2005-06)² motion. The circuit court denied the motion on the ground that Bowers's claims were barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Because the circuit court did not err, we affirm.

BACKGROUND

¶2 In 2000, Bowers pled guilty to two counts of first-degree sexual assault of a child.³ In his direct appeal under WIS. STAT. RULE 809.30, Bowers sought to withdraw his guilty plea based on ineffective assistance of trial counsel. The circuit court denied Bowers's postconviction motion. We affirmed. *State v. Bowers*, No. 2001AP2205-CR, unpublished slip op. (Wis. Ct. App. June 25, 2002). The supreme court denied Bowers's petition for review.

¶3 On August 1, 2005, Bowers filed his first WIS. STAT. § 974.06 motion for postconviction relief. In that motion, Bowers again sought to withdraw his plea because of ineffective assistance of counsel, arguing that postconviction counsel had been ineffective for not raising additional challenges to the effectiveness of Bowers's trial attorney. For example, Bowers argued that his trial attorney should have challenged the legality of Bowers's extradition from Michigan to Wisconsin and should have raised a statute of limitations challenge to the criminal complaint. Additionally, Bowers contended that his plea was not

² All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

³ As part of the plea negotiations, four counts of incest with a child and an additional count of first-degree sexual assault of a child were dismissed. Additionally, a 1987 criminal complaint that had charged Bowers with one count of first-degree sexual assault was dismissed.

intelligently entered because he had been given the wrong medication. The circuit court orally denied Bowers's motion on March 16, 2006, and a written order to that effect was entered on June 28, 2007. Bowers did not appeal that order.

¶4 On November 7, 2007, Bowers filed a “motion *nunc pro tunc* vacating the convictions with prejudice.” In this motion, Bowers argued that the criminal complaint did not adequately specify the dates on which the sexual assaults were alleged to have occurred. The circuit court denied Bowers's motion as procedurally barred by *Escalona-Naranjo*. Bowers appeals.

DISCUSSION

¶5 A defendant cannot raise an argument in a subsequent postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Escalona-Naranjo*, 185 Wis.2d at 181-82. A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Id.* at 185; *see also* WIS. STAT. § 974.06(4) (“[a]ny ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived ... in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion,” absent sufficient reason.).

[A] criminal defendant [is] required to consolidate all postconviction claims into his or her original, supplemental, or amended motion. If a criminal defendant fails to raise a constitutional issue that could have been raised on direct appeal or in a prior § 974.06 motion, the constitutional issue may not become the basis for a subsequent § 974.06 motion unless the court ascertains that a sufficient reason exists for the failure either to allege or to adequately raise the issue in the appeal or previous § 974.06 motion.

State v. Lo, 2003 WI 107, ¶31, 264 Wis. 2d 1, 665 N.W.2d 756 (citations omitted).

¶6 “[D]ue process for a convicted defendant permits him or her a single appeal of [a] conviction and a single opportunity to raise claims of error” *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Bowers has already had more than that single opportunity—in both his direct appeal and in his first WIS. STAT. § 974.06 motion. Therefore, he is procedurally barred from attempting to raise additional claims in this latest motion.

¶7 Bowers offers no sufficient reason, and we can discern none from the record, why the issue he raises in his latest motion was not raised previously, either in his direct appeal or in his first WIS. STAT. § 974.06 motion. As the supreme court has stated, “[w]e need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. The circuit court properly ruled that Bowers’s latest challenge to his conviction was procedurally barred.

By the Court.—Order affirmed.

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

