

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 2009

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. 2009AP350

Cir. Ct. No. 2005CF3091

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DEMETRIUS L. WEBB,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Demetrius L. Webb, *pro se*, appeals an order denying his postconviction motion, which sought resentencing. The circuit court concluded Webb's motion was procedurally barred. We agree and affirm the order.

¶2 In September 2005, Webb pled guilty to two counts of armed robbery, as party to a crime. He was given concurrent terms of twelve years' initial confinement and eight years' extended supervision on each count. On appeal, appointed counsel submitted a no-merit report, to which Webb did not respond. This court summarily affirmed the judgment of conviction. *See State v. Webb*, No. 2006AP1879-CRNM, unpublished slip op. (WI App Jan. 9, 2007).

¶3 On December 5, 2008, Webb filed a *pro se* motion in circuit court, seeking resentencing. He alleged that he had been sentenced on inaccurate information, including erroneous information about his juvenile record and the facts surrounding the offenses underlying his conviction, and that trial counsel had been ineffective for failing to identify and address the inaccuracies.¹ The circuit court denied the motion, concluding the claims for relief were barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) and *State v. Tillman*, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. Webb appeals.

¶4 On appeal, Webb argues that he is entitled to resentencing because he has a due process right to be sentenced on accurate information. *See State v. Anderson*, 222 Wis. 2d 403, 408, 588 N.W.2d 75, 77 (Ct. App. 1998). He also renews his complaint that counsel was ineffective for failing to identify and address the inaccurate information. He does not, however, address the circuit court's basis for denying his motion.

¹ Webb's motion also sought sentence modification based on new factors. The alleged "new factors" were the errors on which the court relied. On appeal, Webb abandons the sentence modification issue. *See Reiman Assoc., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 307 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issues not briefed deemed abandoned).

¶5 A defendant is required to raise all grounds for relief in his or her original, supplemental or amended motion for postconviction relief, unless sufficient reason is shown for failing to raise the issues earlier. *See* WIS. STAT. § 974.06(4); *see also Escalona*, 185 Wis. 2d at 181, 517 N.W.2d at 162. The phrase “original, supplemental or amended motion” also encompasses a direct appeal. *See State v. Lo*, 2003 WI 107, ¶32, 264 Wis. 2d 1, 17, 665 N.W.2d 756, 764. The requirements of § 974.06 are applicable even to claims of constitutional magnitude.² *See Lo*, 2003 WI 107, ¶31, 264 Wis. 2d at 16, 665 N.W.2d at 763.

¶6 Webb’s case has already been before this court on direct appeal, albeit in no-merit form. A no-merit, though, “may serve as a procedural bar to a subsequent postconviction motion and ensuing appeal which raises ... other issues that could have been previously raised.” *Tillman*, 2005 WI App 71, ¶27, 281 Wis. 2d at 171–172, 696 Wis. 2d at 581. Webb could have raised the issues of erroneous sentencing information and ineffective assistance of trial counsel in a response to the no-merit, which had raised the issue of the circuit court’s sentencing discretion. Instead, Webb filed no response at all.

¶7 Further, Webb does not attempt to offer, in either his motion or main brief, a “sufficient reason” for not raising these issues earlier. In his reply brief, Webb states that he “did not realize that [his] right to appeal was not being protected” and seeks reinstatement of his appellate rights “based on the failure of [his] attorney to protect that right, when as the Assistant Attorney General pointed

² We note that Webb captioned his motion as one for relief under WIS. STAT. RULE 809.30(2)(h). *See* WIS. STAT. § 973.19(1)(b). However, RULE 809.30 governs postconviction motions brought prior to a direct appeal. Webb previously had a direct appeal, so RULE 809.30 is inapplicable. Although neither the circuit court nor the State addressed this matter directly, it appears the circuit court appropriately treated Webb’s motion as a WIS. STAT. § 974.06 motion.

out he had the opportunity to [raise] these issues.” Webb also asks not to be held to the same standards as legal professionals.

¶8 Aside from the fact that we ordinarily do not consider arguments first raised in reply briefs, *see Northwest Wholesale Lumber v. Anderson*, 191 Wis. 2d 278, 294 n.11, 528 N.W.2d 502, 508 n.11 (Ct. App. 1995), Webb’s reasoning is insufficient to overcome the *Escalona* bar. First, as a general proposition, Webb’s right to appeal *was* protected when his attorney filed a no-merit appeal: “due process for a convicted defendant permits him ... a single appeal of that conviction and a single opportunity to raise claims of error[.]” *See State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84, 86 (Ct. App. 1998). Second, the State was not faulting the attorney in its brief but, instead, pointing out that Webb himself could have raised these same issues in his no-merit response. Finally, although we grant *pro se* criminal defendants considerable latitude, every person is presumed to know the law and cannot claim ignorance as a defense. *See Putnam v. Time Warner Cable*, 2002 WI 108, ¶13 n.4, 255 Wis. 2d 447, 458 n.4, 649 N.W.2d 626, 632 n.4; *see also State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 729, 681 N.W.2d 230, 241 (ignorance of the law is not a defense). The circuit court appropriately concluded Webb’s claims of error are procedurally barred.

By the Court.—Order affirmed.

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

