COURT OF APPEALS
DECISION
DATED AND FILED

May 1, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1779 **Cir. Ct. No. 2001CF292**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER D. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Christopher D. Johnson appeals from an order denying his motion for postconviction relief, filed pursuant to WIS. STAT. § 974.06

(2009-10).[1] The circuit court denied the motion as procedurally barred, but also rejected the motion on its merits. We agree that the motion is procedurally barred, and we affirm.

¶2 In 2001, Johnson was charged with one count of armed robbery, with the threat of force, as party to a crime. At that time, the charge was a Class B felony, punishable by up to sixty years' imprisonment. *See* WIS. STAT. §§ 943.32(1)(b)-(2) (2001-02) and 939.50(3)(b) (2001-02). Pursuant to a plea agreement, Johnson pled guilty to one count of robbery with the use of force, a Class E felony, reducing his exposure to fifteen years' imprisonment. *See* §§ 943.32(1)(a) (2001-02) and 939.50(3)(e) (2001-02). The circuit court sentenced Johnson to two years' initial confinement and seven years' extended supervision, a sentence based partially on Johnson's cooperation with the State in another defendant's trial.

¶3 Johnson did not take a direct appeal. He did, however, file multiple *pro se* postconviction motions regarding his sentence prior to the first revocation of his extended supervision. Johnson also appears to have filed at least two motions after the revocation, and two more motions after the second revocation of his supervision.[2]

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[2] After the third revocation of extended supervision, Johnson took a direct appeal, which resulted in a no-merit report. We do not discuss that appeal further because, in an appeal from revocation of extended supervision, our review would have been limited to the sentence after revocation and not the original judgment of conviction or the plea process. *See* ***State v. Drake***, 184 Wis. 2d 396, 399-400, 515 N.W.2d 923 (Ct. App. 1994); *see also* WIS. STAT. § 302.113(9)(g) (review of revocation only available through *certiorari*).

¶4 In 2011, Johnson filed a postconviction motion seeking to withdraw his guilty plea. He alleged he "had not been duly advised of his right to appeal at sentencing" and complained that there was an insufficient factual basis to support the plea. The motion specifically notes that the conviction in this case led to him being deemed a "career offender" in federal court, where Johnson pled guilty to possession with the intent to distribute crack cocaine and possession of a firearm in furtherance of drug trafficking.[3]

¶5 The circuit court denied the motion, explaining that ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), barred the motion because Johnson gave "no reason why he failed to raise his issues previously." The circuit court also rejected the motion on its merits. Johnson appeals.

¶6 WISCONSIN STAT. § 974.06 was created in 1969 to "'replace habeas corpus as the primary method in which a defendant can attack his conviction after the time for appeal has expired.'" ***Escalona***, 185 Wis. 2d at 176 (citation omitted). "All grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion." *See* § 974.06(4). "Any ground … not so raised … 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[.]" ***Id.*** That is, § 974.06 "'compel[s] a prisoner to raise all questions available to him in one motion.'" *See* ***State v. Lo***, 2003 WI 107, ¶18, 264 Wis. 2d 1, 665 N.W.2d 756 (citation omitted).

[3] As a result of this "career offender" designation, it appears that Johnson's exposure under federal sentencing guidelines was increased from a possible total ninety to ninety-seven months' imprisonment to a possible total of 413 to 515 months' imprisonment. Johnson was ultimately sentenced to 142 months' imprisonment in federal court.

¶7 After his conviction and sentencing but prior to the current motion, and excluding motions following the extended supervision revocations, Johnson appears to have filed at least eight postconviction motions.[4] As the circuit court noted, however, Johnson has not offered with his current motion any "sufficient reason" for his failure to raise his issues—notice of appeal rights and sufficient factual basis—in those prior motions.

¶8 Johnson's first attempted "explanation" for not raising his issues earlier was that the circuit court failed to personally advise him of his postconviction and appellate rights.[5] However, Johnson does not attempt to explain how such a failure constitutes a sufficient reason under ***Escalona***. Irrespective of whether the circuit court's failure to personally advise Johnson of his rights would be a basis for plea withdrawal,[6] it is an undisputed fact that Johnson received and signed the CR-233 form, which advised him of his postconviction and appeal rights even if the circuit court did not.

¶9 Johnson's second explanation for his failure to raise his current issues previously is that his prior motions focused on his sentence. As the circuit

[4] By this court's count, there are at least eight motions—excluding a motion for sentence credit and a motion regarding the details of paying a restitution order—preceding the first revocation. These motions are dated by Johnson on October 21, October 22, October 24, and October 26, 2002; November 13, and November 24, 2002; and February 5, 2003. An additional motion with no date was filed September 30, 2003.

[5] On appeal, Johnson does not address the circuit court's invocation of the procedural bar. He acknowledges that the circuit court invoked the bar but makes no argument on whether it was error for the circuit court to do so.

[6] We take this opportunity to remind Johnson that, in the event that his plea withdrawal motion had been successful, the original armed robbery charge, and the corresponding potential sixty-year penalty, would be reinstated. *See* ***State v. Dielke***, 2004 WI 104, ¶26, 274 Wis. 2d 595, 682 N.W.2d 945.

court noted, however, such an explanation "ignores the mandate of WIS. STAT. § 974.06 and *Escalona*." We agree. "We need finality in our litigation.… Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation." ***Escalona***, 185 Wis. 2d at 185. Issues of constitutional magnitude like those Johnson attempts to raise now are not exempt from this procedural bar. *See* ***id.*** at 181-82.

¶10 Because we conclude that the circuit court properly invoked the ***Escalona*** procedural bar, we do not reach the question of whether the circuit court properly rejected the motion on its merits. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on narrowest possible grounds).

By the Court.—Order affirmed.

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