

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 27, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2476-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROBERT D. HENDRIX,

Defendant-Appellant,

APPEAL from a judgment and an order of the circuit court for Crawford County: GEORGE S. CURRY, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Robert Hendrix has filed a notice of appeal from a judgment of conviction and from a postconviction order entered by the trial court. Hendrix argues that he should be allowed to withdraw his guilty pleas in order to correct a manifest injustice. We conclude that Hendrix is barred from raising this claim under *State v. Escalona-Naranjo*, 185 Wis.2d 168, 517 N.W.2d 157 (1994). We affirm.

Pursuant to a plea agreement, Hendrix pleaded guilty to two counts of armed robbery, one count of false imprisonment, and one count of recklessly endangering safety. After sentencing, Hendrix discovered that his trial counsel incorrectly informed him about the elements of recklessly endangering safety based on a faulty jury instruction. Hendrix filed a postconviction motion based on this error, and the trial court, in an oral ruling, allowed Hendrix to withdraw his guilty plea to that charge.

Three months after the trial court orally granted Hendrix's motion to withdraw his guilty plea to recklessly endangering safety, Hendrix filed a second postconviction motion, arguing that his guilty pleas to all four counts were made as part of a "package deal," and that his reliance on the faulty jury instruction as to the one charge spoiled the entire plea agreement, requiring that he be allowed to withdraw his pleas to the other three charges, restoring him to his original position before making the plea agreement. After considering the merits of Hendrix's argument, the trial court denied the second postconviction motion to withdraw the remaining pleas.

Under *Escalona-Naranjo*, a defendant must "raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion" for postconviction relief unless the defendant establishes a "sufficient reason" why the issue was not asserted or was inadequately raised. *Id.* at 185, 517 N.W.2d at 164. Hendrix has not alleged a sufficient reason for not raising in his first postconviction motion his claim that all of his pleas should be withdrawn based on the trial court's error in accepting the reckless endangerment plea. In his first motion, brought on November 24, 1995, and decided orally by the trial court on February 14, 1995, Hendrix asked only that his plea to the reckless endangerment charge be withdrawn. The direct appeal statute, RULE 809.30, STATS., makes no provision for bringing a second postconviction motion after an initial postconviction motion has been decided. Hendrix's second postconviction motion, brought three months after the trial court's ruling on the first motion and decided on August 21, 1995, was thus made pursuant to § 974.06, STATS. As such, Hendrix should have alleged a sufficient reason for not raising the issue in his previous postconviction motion. Under *Escalona-Naranjo*, we will not consider the claim.

By the Court.— Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.