

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 23, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1227

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES T. ROGERS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County:
GERALD C. NICHOL, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

PER CURIAM. James Rogers appeals from the trial court's order denying his motion for postconviction relief brought pursuant to § 974.06, STATS. Rogers raises the following issues: (1) whether the trial court properly enhanced his sentence based on his repeater status; (2) whether his case should have been dismissed because his preliminary hearing was held beyond the ten-day statutory

time frame, § 970.03(2), STATS.; (3) whether he was denied his right to effective assistance of trial counsel; (4) whether he should have been afforded the right to be indicted by a grand jury rather than by criminal complaint and information; (5) whether he was denied the right to review his presentence report and contest its accuracy before sentencing; (6) whether he was entitled to default judgment because the state was late in filing its response to his postconviction motion; and (7) whether he received ineffective assistance of appellate counsel in one of his prior appeals. We affirm the order.

Rogers was convicted on June 12, 1986, of one count of robbery as a repeat offender. He brought a motion for postconviction relief in the trial court which was denied May 8, 1987. Rogers filed an appeal. On February 16, 1989, this court reversed in part and affirmed in part. We remanded for an evidentiary hearing on Rogers' claim that his trial counsel was ineffective for failing to call witness Sarah Couper at trial. After remand, the trial court held an evidentiary hearing and denied postconviction relief on March 25, 1992. This court affirmed on December 9, 1993. Over four years later, Rogers filed another motion for postconviction relief pursuant to § 974.06, STATS. The trial court denied the motion on April 2, 1998.

A motion for postconviction relief under § 974.06, STATS., cannot be used to raise issues that could have been raised on an earlier direct appeal or postconviction motion under § 974.02, STATS., unless the defendant shows and the court finds that a sufficient reason exists for the defendant's failure to raise the issues in the earlier postconviction motion or appeal. Section 974.06(4); *State v. Escalona-Naranjo*, 185 Wis.2d 168, 181-82, 517 N.W.2d 157, 162 (1994). With regard to all of the issues Rogers attempts to raise except the issue of ineffective assistance of appellate counsel, Rogers has presented no reason at all, much less a

“sufficient reason,” for failing to raise in his previous appeals or postconviction motions the issues he now seeks to raise. Therefore, under *Escalona*, Rogers is barred from raising these issues now. *See id.*, 185 Wis.2d at 185, 517 N.W.2d at 163.

As for Rogers’ claim of ineffective assistance of appellate counsel, although *Escalona* presents no bar to raising this issue, we nevertheless decline to consider it. Rogers only briefly argues that his appellate counsel was ineffective for failing to raise the issue of ineffective assistance of trial counsel. Although Rogers’ brief is somewhat unclear, it appears that Rogers’ claim is grounded on his argument that trial counsel should have raised mitigating factors for the court’s consideration when imposing sentence. Rogers has not sufficiently developed this argument. Therefore, we will not consider it. *See State v. Pettit*, 171 Wis.2d 627, 646-47, 492 N.W.2d 633, 642 (Ct. App. 1992) (inadequately briefed issues and arguments not supported by legal authority will not be considered).

By the Court.—Order affirmed.

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

