

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 26, 2004

Cornelia G. Clark
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. 03-2565-CR
STATE OF WISCONSIN**

Cir. Ct. No. 94CM000491

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TRAVIS E. BLANKS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Finality is quintessential in resolving litigation; to achieve this result, WIS. STAT. § 974.06(4) bars successive motions and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

appeals. We affirm the denial of Travis E. Blanks' postconviction motion because all of the issues he raises should have been raised in his 1995 direct appeal.

¶2 Blanks was convicted in 1994 of one count of criminal damage to property, as a habitual criminal, in violation of WIS. STAT. §§ 943.01(1) and 939.62. After sentencing, he filed a "Notice of Intent to Pursue Postconviction Relief" and followed up with a "Motion To Modify Sentence." In the motion, Blanks sought to withdraw his plea on the grounds it was coerced or, in the alternative, he sought to have his thirty-month prison term modified from consecutive to other sentences to concurrent based upon new information concerning his prior convictions. The circuit court denied his motion and Blanks appealed. We affirmed the circuit court's order denying Blanks postconviction motion in *State v. Travis Blanks*, No. 95-0579-CR, unpublished slip op. (Wis. Ct. App. Sept. 6, 1995), and the supreme court denied a petition for review later the same year.

¶3 Nothing was heard from Blanks for more than eight years, when he filed a second "Motion to Modify Sentence." Blanks offered three reasons why his sentence should be modified: (1) the circuit court failed to adequately advise him of the possible penalties he faced as a habitual criminal, (2) the court improperly imposed the repeater status in pronouncing sentence, and (3) double jeopardy. The circuit court denied Blanks' second motion.

¶4 In the circuit court, the State argued that Blanks' second motion to modify his sentence was a WIS. STAT. § 974.06 postconviction motion, and he "cannot raise issues that previously could have been and should have been raised on a prior direct appeal." Blanks responded that he did not file a § 974.06 postconviction motion, but a motion to modify his sentence, which he argued

could be filed at any time. The circuit court concluded that because Blanks had not alleged a “new factor” in his motion, that it would consider his motion as a basic postconviction motion and denied the motion because he could have raised the issues in his direct appeal. Blanks appeals.

¶5 The circuit court properly treated this latest motion as a WIS. STAT. § 974.06 motion. Section 974.06(4) bars a defendant from bringing postconviction claims, including constitutional claims, under § 974.06 if the defendant could have raised the issues in a previous postconviction motion or on direct appeal, unless the defendant has a “sufficient reason” for failing to do so. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). A claim brought under § 974.06 is likewise barred if it has been finally adjudicated during a previous appeal. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. The supreme court recently restated the central holding of *Escalona-Naranjo*:

[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 In his 1994 direct appeal, Blanks challenged the voluntariness of his plea. The issues he now raises could have been raised in his direct appeal, all three issues spring from his plea and sentencing. Blanks offers no explanation of why these issues were not raised in 1994, other than his argument to the circuit court—which we have rejected—that this is a motion to modify his sentence and

not a WIS. STAT. § 974.06 postconviction motion. To consider Blanks' belatedly raised issues would be to ignore the goal of § 974.06(4) to bring finality to litigation.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

