

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 08, 2005

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. 2004AP821

Cir. Ct. No. 1997CF973526

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EARL JONES, JR.,

DEFENDANT-APPELLANT.

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

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Earl Jones, Jr., appeals from the order denying his motion for postconviction relief. He argues that the circuit court erred when it found that his motion was precluded by *State v. Escalona-Naranjo*, 185 Wis. 2d

168, 517 N.W.2d 157 (1994). Because we conclude that his claim is barred, we affirm.

¶2 Jones was convicted after a jury trial of one count of felony murder and one count of armed robbery, both as a party to a crime. The court sentenced him to a total of eighty-five years in prison. He appealed. His appellate counsel filed a no-merit appeal, and Jones did not respond. We then affirmed his conviction by summary order. *State v. Jones*, Appeal No. 98-2112-CRNM, (Nov. 24, 1998). He then filed a motion for postconviction relief alleging that he received ineffective assistance of both trial and appellate counsel. The motion was denied by the circuit court and he once again appealed. We again affirmed that order, finding that his claims were barred by *Escalona*. *State v. Jones*, Appeal No. 99-2098 (Sept. 18, 2000). He then filed the motion which is the subject of this appeal.

¶3 He argues here that he is entitled to a *Machner*¹ hearing on his claims of ineffective assistance of trial and postconviction counsel. We agree with the circuit court, however, that Jones's claims are once again barred by *Escalona*. Under that case, a defendant must raise all grounds of relief in his original supplemental or amended motion for postconviction relief. 185 Wis. 2d at 181. If a defendant's grounds for relief have been finally adjudicated, waived or not raised in a prior postconviction motion, they may not become the basis for a new postconviction motion, unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Id.* at 182.

¹ *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

Under this plain language, Jones was required to present all of the grounds for postconviction relief available to him in a postconviction motion or direct appeal. Jones has not offered any reason why he did not raise these issues in his direct appeal. He had the opportunity to respond to counsel's no-merit report, and to raise any issue he wanted the court to consider, and chose not to do so. He may not now relitigate those issues. We affirm the order of the circuit court.

By the Court.—Order affirmed.

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

