COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-2249

Cir. Ct. Nos. 93CF931324
93CF932361

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAMONT WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lamont Williams appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)[1] motion seeking to "void excess

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

sentence." Williams argues that the court imposed a sentence not authorized by law, citing ***Blakely v. Washington***, 124 S. Ct. 2531 (2004). Because Williams's motion is procedurally barred and ***Blakely*** does not apply retroactively to his case, we affirm.

BACKGROUND

¶2 On December 16, 1993, Williams was convicted by a jury of multiple counts of armed robbery. He was sentenced in February 1994. At the time Williams was sentenced, guidelines existed for certain crimes, including the crime of armed robbery of which he had been convicted. The trial court imposed a sentence structure, which resulted in a sentence that exceeded the recommended guidelines. The trial court explained its reason for doing so.

¶3 Williams filed a direct appeal with the assistance of counsel. This court affirmed the judgment and order denying postconviction relief on February 28, 1997. On September 30, 1997, Williams filed a motion seeking sentence modification. The trial court denied the motion on October 1, 1997. In May 1998, Williams filed a motion seeking sentence modification, which was denied on May 28, 1998. In 2003, Williams filed a motion seeking restructuring of his sentence. Again, the trial court denied the motion. Williams appealed from that order. This court affirmed the trial court's denial of Williams's motion on September 21, 2004.

¶4 While that appeal was pending, Williams filed a motion to "void excess sentence."[2] The trial court entered an order denying that motion. Williams now appeals from that order.

DISCUSSION

¶5 WISCONSIN STAT. § 974.06 and ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 181-82, 185, 517 N.W.2d 157 (1994), preclude a defendant from pursuing claims in a subsequent appeal, which could have been raised in his or her direct appeal, unless the defendant provides sufficient reason for failure to raise the claims in the first instance. The motion that forms the basis of this appeal was properly denied based on this rule, which Williams has repeatedly ignored.

¶6 The State accurately summarized the principles relative to this rule:

> All challenges to a conviction or sentence should be brought in the defendant's direct appeal. The general rule barring successive litigation applies whether the successive attack is labeled an appeal, a § 974.06 motion, a habeas petition or a sentence modification motion. This rule applies regardless of whether the defendant seeks to raise new issues or whether he seeks to litigate issues he has previously raised. Multiple and successive attacks on the same conviction or sentence undermine the goal of finality of litigation, clog the judicial system and waste judicial resources to the detriment of other litigators.

See ***State v. Lo***, 2003 WI 107, ¶¶44-46, 264 Wis. 2d 1, 665 N.W.2d 756; ***Escalona-Naranjo***, 185 Wis. 2d at 181-82; ***State ex rel. Macemon v. Christie***, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998); ***State ex rel. Dismuke v.***

[2] The State notes that although Williams's appeal from the 2003 motion was pending in this court when he filed the motion to "void excess sentence," WIS. STAT. § 808.075(4)(g)6 does not appear to bar the motion. Based on the State's concession, we need not address this issue.

Kolb, 149 Wis. 2d 270, 273, 441 N.W.2d 253 (Ct. App. 1989); ***State v. Rohl***, 104 Wis. 2d 77, 96, 310 N.W.2d 631 (Ct. App. 1981).

¶7 We will consider a successive attack only if the defendant provides sufficient reason for failing to raise the issue in the direct or first appeal. Here, Williams apparently suggests that this issue could not have been raised previously because his appeal is based on the recent decision of the United States Supreme Court in ***Blakely***. The Supreme Court issued the ***Blakely*** decision on June 24, 2004. Williams was sentenced in 1994 and his direct appeal became final in 1997.

¶8 Williams argues that according to ***Blakely***, he should have had a jury determine whether facts existed that justified increasing the penalty for his crime beyond the prescribed statutory maximum. We reject his contention.

¶9 The ***Blakely*** rule created a new rule of criminal procedure, which cannot be applied retroactively to Williams's case. A case is final for retroactivity purposes if the prosecution is no longer pending, the judgment of conviction has been entered, the right to a direct appeal and final judgment has been exhausted, and the time to appeal to the Supreme Court has expired. ***State v. Lagundoye***, 2004 WI 4, ¶20, 268 Wis. 2d 77, 674 N.W.2d 526. Generally, new rules of criminal procedure cannot be applied to cases that were final before the new rule was issued. ***Id.***, ¶13. Here, Williams's case was final and all times for appeal had expired when the Supreme Court decided ***Blakely***. Accordingly, the rule of law in ***Blakely*** cannot be applied to Williams's case.

By the Court.—Order affirmed.

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