

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 7, 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. 2004AP2591

STATE OF WISCONSIN

Cir. Ct. No. 1995CF952617

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAPONZO MONROE DALLAS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEAN W. DI MOTTO, Judge. *Affirmed.*

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

¶1 PER CURIAM. LaPonzo Dallas appeals from the order denying several motions. He argues that the circuit court erred when it denied his motions to compel the production of a transcript and to compel the State to produce any and all information about Timothy Young. Because we conclude that these

motions are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), we affirm.¹

¶2 Dallas was convicted of second-degree sexual assault (penis to mouth contact), in 1996. The court sentenced him to ten years in prison. Appellate counsel subsequently filed a no-merit report on Dallas's behalf. Prior to trial, Dallas was ordered to provide samples of his blood, saliva, and hair. Dallas sought the results and the prosecutor said that the State Crime Lab had not tested the samples. Several months after the no-merit report was filed, the State discovered a crime lab report that established that limited testing had been done. Appellate counsel still concluded that an appeal lacked arguable merit. This court rejected the no-merit report and ordered new counsel to be appointed to represent Dallas.

¶3 Successor counsel then brought a motion for postconviction relief in the circuit court. The circuit court denied the motion in a thorough decision. Dallas's appellate counsel filed a notice of appeal, but at some point Dallas elected to proceed *pro se*. Dallas missed the briefing deadlines and the appeal was ultimately dismissed in May 2000.

¶4 Almost four years later, Dallas filed a series of motions, two of which are the subject of this appeal. The circuit court denied the motions. The court ruled that the transcript of the 1995 hearing had no relevance to the merits of

¹ After the briefs had been filed and the appeal submitted to the court, the appellant moved to supplement the record. It appears that he moves to supplement the record with the missing transcript which was the subject of one of his motions. Because this transcript did not affect either the decision of the circuit court or the decision of this court, the motion is denied.

the prior proceedings, and that the prosecutor did not have any obligation to produce information about Timothy Young.² Dallas appeals.

¶5 In *Escalona* the supreme court stated:

We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Id. at 185. A defendant must raise all grounds of relief in his original supplemental or amended motion for postconviction relief. *Id.* 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 181-82.

¶6 We conclude that the issues Dallas sought to raise in the circuit court and raises again on appeal are barred under *Escalona*. Dallas has not established any reason why the transcript of a hearing held months before his actual trial and raising the issue of withdrawal of counsel, creates any basis to challenge his conviction. He simply has not established any legitimate purpose for reviewing the transcript.

¶7 Further, his motion for the State to produce all information about Timothy Young is equally without merit. First, he has not established that the State withheld any information about Young. More importantly, in the motion

² Dallas asserts that it was Young, and not he, who committed the crime.

that was heard after this court rejected the no-merit report, the trial court rejected his request to explore the possibility of Young’s involvement in the case. At that time, the circuit court found that the issue of Dallas’s identity “was fully explored at trial, and that the State’s evidence was overwhelming.” The court noted, among other things, that the victim had testified that Dallas had showed her a tattoo with his name in it before the assault occurred. Consequently, we conclude that this issue, too, is barred by *Escalona*. For the reasons stated, 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.

