

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 28, 2006**

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. 2006AP905**

**Cir. Ct. No. 1996CF963953**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ERIC LAMONT HICKS,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DAVID A. HANSHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Eric Lamont Hicks appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)<sup>1</sup> postconviction motion. Hicks claims

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the trial court erred in denying his motion on the grounds that it was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Because Hicks has failed to demonstrate a sufficient reason for failing to raise the current issues in either a direct appeal or his June 2003 postconviction motion, we affirm.

## BACKGROUND

¶2 On October 10, 1996, Hicks pled guilty to one count of first-degree reckless homicide. On November 4, 1996, he was sentenced to thirty-five years in prison. At that time, Hicks was uncertain about whether to pursue postconviction relief. In October 1997, Hicks filed a *pro se* motion for production of transcripts, which was denied on the grounds that the time for his direct appeal had expired and Hicks had not asserted any arguably meritorious claims. Hicks then filed a second motion for transcripts, which was again denied for the same reason.

¶3 In June 2003, Hicks filed a *pro se* WIS. STAT. § 974.06 motion, alleging that his trial counsel provided ineffective assistance by failing to raise a competency issue. The trial court denied the motion on the basis that there was nothing in the record suggesting Hicks was incompetent, and Hicks did not demonstrate any reason to doubt his competence. Hicks did not appeal from the trial court order denying this first § 974.06 motion.

¶4 In March 2006, Hicks filed a second *pro se* WIS. STAT. § 974.06 motion, which formed the basis for this appeal. Hicks alleged that his guilty plea was unknowingly and involuntarily entered because he did not understand the elements of the crime for which he was convicted. He contended that his claim should not be procedurally barred due to trial counsel's failure to adequately explain the elements of the offense. The trial court denied this motion because

Hicks could have raised these issues in his June 2003 § 974.06 motion, but did not. Hicks now appeals from that order.

## DISCUSSION

¶5 Hicks argues that the trial court should not have denied his motion on procedural grounds and claims that he has a sufficient reason for failing to raise these issues earlier, namely that he was “undecided” at the time of his direct appeal, and that he did not raise the current claims in his first postconviction motion because the trial court and his trial counsel failed to properly advise him of the elements of the offense. We reject his arguments and affirm.

¶6 Defendants are not permitted to pursue an endless succession of postconviction remedies:

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.

*Escalona-Naranjo*, 185 Wis. 2d at 185. Thus, claims which could have been, but were not, raised in a prior postconviction motion or on direct appeal, are procedurally barred unless a sufficient reason for failing to raise the issue is presented. *Id.*

¶7 “[D]ue process for a convicted defendant permits him or her a single appeal of that conviction and a single opportunity to raise claims of error ....” *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Hicks was already afforded his single opportunity—during his first

WIS. STAT. § 974.06 postconviction motion. Thus, he is procedurally barred from attempting to raise additional claims in his current appeal.

¶8 In order to overcome the procedural bar, Hicks contends he has a sufficient reason for failing to raise the current claim in his earlier motion—that he received ineffective assistance of trial counsel and did not know of this claim earlier. We conclude that Hicks has failed to set forth a sufficient reason for not including the current claims in his earlier postconviction motion. In that first motion, Hicks raised the issue of ineffective assistance of trial counsel, albeit on different grounds than he asserts here. Nonetheless, the issue was raised and rejected by the trial court. Hicks cannot repeatedly proffer additional examples of trial counsel’s failures in an attempt to file successive postconviction motions. This is precisely what the *Escalona-Naranjo* rule was devised to prohibit.

¶9 Hicks could have raised this issue in his June 2003 postconviction motion, which was five years after his conviction. He did not. Moreover, he elected not to appeal to this court from the first postconviction motion. Such conduct precludes him from raising these issues now in a second postconviction motion. See *State v. Langston*, 53 Wis. 2d 228, 231, 191 N.W.2d 713 (1971). Finally, Hicks’s attempts to set forth a sufficient reason to overcome the procedural bar are conclusory assertions without any basis in the record and therefore, are unpersuasive to this court.

*By the Court.*—Order affirmed.

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

