

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 6, 2010

David R. Schanker
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. 2009AP572

Cir. Ct. No. 1997CF975720

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PHAROAH VERNON MORRIS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
M. JOSEPH DONALD, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Pharoah Vernon Morris appeals from an order denying clarification and reconsideration of a postconviction order summarily denying a motion for relief from his 1999 judgment of conviction for armed robbery. The issue is whether a void judgment may be properly challenged at any

time, thereby avoiding the “sufficient reason” requisite of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994).¹ We conclude that Morris’s motion for relief from what he characterizes as a “void and defective” judgment of conviction is procedurally barred by *Escalona* for Morris’s failure to allege why he did not challenge the validity of his judgment on direct appeal. Therefore, we affirm.

¶2 In 1998, a jury found Morris guilty of armed robbery as a party to the crime. In 1999, the trial court imposed a thirty-year sentence to run consecutive to any other sentence, with a parole eligibility date of May 17, 2009. Morris appealed, contending that he was denied his right to a speedy trial. *See State v. Morris*, No. 00-0310-CR, unpublished slip op. ¶1 (WI App June 14, 2001). We disagreed, and affirmed the judgment of conviction. *See id.*, ¶¶1, 5.

¶3 In late 2008, Morris moved for relief from the 1999 judgment of conviction, contending that it was void because the charge was allegedly amended at sentencing; he also raises a correlative ineffective assistance of counsel claim. The trial court construed the motion to be under WIS. STAT. § 974.06 and summarily denied it as procedurally barred pursuant to *Escalona* and § 974.06(4), and because his “allegations [we]re conclusory and insufficient.” Morris then moved for clarification and reconsideration, claiming that he sought relief pursuant to WIS. STAT. § 806.07, not § 974.06. The trial court denied reconsideration because § 806.07 applies to civil judgments, and even if it applies to criminal judgments, Morris’s ten-year delay did not constitute a one-year or a reasonable delay as contemplated by § 806.07(2). The trial court reiterated the

¹ All references to the Wisconsin Statutes are to the 2007-08 version.

requirement to allege all grounds for postconviction relief on direct appeal, ruling that Morris's motion was procedurally barred by *Escalona* and § 974.06(4). Morris appeals.

¶4 To avoid *Escalona*'s procedural bar, Morris must allege a sufficient reason for failing to have previously raised all grounds for postconviction relief on direct appeal or in his original postconviction motion. *See Escalona*, 185 Wis. 2d at 185-86. Morris contends that his motion is not governed by WIS. STAT. § 974.06(4) or *Escalona*, thereby relieving him of the requisite to allege a sufficient reason for failing to raise the issue previously.

¶5 Morris moved for relief from judgment pursuant to WIS. STAT. § 806.07(1)(d), contending that the judgment was void. Morris did not allege any reason for his delay, contending that no reason was required pursuant to § 806.07(1)(d) and (2). He consequently contends that he has either "a reasonable time" to bring his motion, pursuant to § 806.07(2), or no deadline because a void judgment may be challenged at anytime because it is inherently invalid.

¶6 Morris is in error. A belated constitutional challenge to a judgment of conviction is cognizable pursuant to WIS. STAT. § 974.06(1). *See* WIS. STAT. § 967.01 ("Chapters 967 to 979 shall govern all criminal proceedings and is effective on July 1, 1970.") Consequently, Morris's challenge to the validity of his 1999 judgment of conviction is properly cognizable pursuant to § 974.06, not WIS. STAT. § 806.07, which expressly applies to civil judgments. *See* WIS. STAT. ch. 806 (entitled, Civil Procedure – Judgment).²

² *See also* WIS. STAT. § 801.01(2) (WIS. STAT. chs. 801 to 847 govern all civil proceedings).

¶7 Contrary to Morris’s contention, the trial court did not err by construing his challenge to the validity of his judgment of conviction pursuant to WIS. STAT. § 974.06. As such, Morris was required to allege a “sufficient reason” for failing to previously challenge the validity of his 1999 judgment of conviction. *See* § 974.06(4); *Escalona*, 185 Wis. 2d at 185-86. In his 2008 motion, Morris alleged no reason for belatedly raising this issue.³ Consequently, his motion is procedurally barred. *See* § 974.06(4); *Escalona*, 185 Wis. 2d at 185-86.

By the Court.—Order affirmed.

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

³ Even if the motion were properly cognizable pursuant to WIS. STAT. § 806.07(1)(d), the trial court would require a showing on why a ten-year delay constituted “a reasonable time” pursuant to § 806.07(2).

