

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 2010

A. John Voelker
Acting 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. 2009AP2886

Cir. Ct. No. 1994CF941144

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARIUS JENNINGS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Darius Jennings, *pro se*, appeals the circuit court's order denying his motion for postconviction relief under WIS. STAT. § 974.06

(2007-08).¹ He contends that his direct appeal rights should be reinstated and that appellate counsel should be appointed for him because his waiver of counsel during his direct appeal was invalid. We affirm.

¶2 “[A]ny claim that could have been raised on direct appeal or in a previous Wis. Stat. § 974.06 ... postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason.” *State v. Lo*, 2003 WI 107, ¶2, 264 Wis. 2d 1, 665 N.W.2d 756; *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Jennings was convicted in 1994, pursued a direct appeal *pro se* after his appointed appellate counsel withdrew, and has filed multiple post-conviction motions under § 974.06 in the sixteen years since his conviction. Jennings did not previously raise this argument in any of those prior proceedings. Jennings contends that the fact that his waiver of counsel was invalid, by itself, constitutes a “sufficient reason” for him to have not previously brought the claim. Regardless of whether his waiver of counsel was valid, Jennings was required to provide a reasonable explanation of why he did not previously raise this argument in the many postconviction motions he has brought since his conviction. Because Jennings has not provided a sufficient reason for this failure, he is barred from raising this argument by *Escalona-Naranjo* and its progeny.

By the Court.—Order affirmed.

This opinion will not be published.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

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

