COURT OF APPEALS
DECISION
DATED AND FILED

November 8, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2338 **Cir. Ct. No. 2000CF1657**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REGGIE L. TOWNSEND,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed.*

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

¶1 PER CURIAM. Reggie L. Townsend, *pro se*, appeals the circuit court's order denying his motion for postconviction relief under WIS. STAT.

§ 974.06 (2009-10).[1] He argues that the circuit court misused its discretion in denying his motion for a hearing on his claim of ineffective assistance of counsel and in denying his motion to withdraw his guilty plea. We conclude that these claims are procedurally barred. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Therefore, we affirm.

¶2 Townsend was convicted of first-degree reckless homicide in 2000. Townsend's appointed appellate counsel filed a direct no-merit appeal on his behalf. After conducting an independent review of the record, and considering the response Townsend submitted to his counsel's no-merit report, we summarily affirmed. Several years later, Townsend filed a postconviction motion pursuant to WIS. STAT. § 974.06, arguing that he received ineffective assistance of postconviction counsel and that the circuit court misused its discretion in denying his motion to withdraw his guilty plea. The circuit court denied the motion as barred by ***Escalona-Naranjo***, 185 Wis. 2d at 185, and ***State v. Tillman***, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574. We affirmed. On November 30, 2009, Townsend filed a motion to modify his sentence to remove the DNA surcharge, which the circuit court denied. On August 13, 2010, Townsend filed another postconviction motion pursuant to § 974.06, which the circuit court again denied.

¶3 "[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."

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Escalona-Naranjo, 185 Wis. 2d at 185. Townsend contends that the issues he is attempting to raise in this appeal should not be subject to the ***Escalona-Naranjo*** bar because he had a sufficient reason for not raising them sooner; his appointed appellate attorney filed a no-merit report rather than raising meritorious issues on direct appeal. We rejected this argument in ***Tillman***, 281 Wis. 2d 157, ¶19, where we said that the ***Escalona-Naranjo*** bar applies equally to appellants who have previously had a no-merit appeal, unless the appellant provides a sufficient reason for failing to raise the argument in his response to the no-merit report. In addition to the procedural bar presented by ***Escalona-Naranjo***, we note that Townsend has already raised these issues, albeit in slightly different form, in prior motions. "A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue." ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Townsend is thus procedurally barred from raising his claims by both ***Witkowski*** and ***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.