

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 10, 2013

Diane M. Fremgen
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. 2012AP153

STATE OF WISCONSIN

Cir. Ct. No. 1995CF954767

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GABLE DEE HALL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KEVEN E. MARTENS, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Gable Dee Hall, *pro se*, appeals the circuit court's order denying his postconviction motion. The issue is whether Hall's claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517

N.W.2d 157, 163–164 (1994). We conclude that they are barred. Therefore, we affirm.

BACKGROUND

¶2 Following a jury trial, Hall was convicted of two counts of first-degree sexual assault of a child and one count each of abduction of another’s child and exposing a child to harmful materials. By appointed appellate counsel, Hall moved for postconviction relief, arguing that his conviction for exposing a child to harmful materials should be vacated because the applicable statute was unconstitutional. He further argued that the evidence submitted on the unconstitutional count resulted in prejudicial spillover on the other counts of the complaint, necessitating a new trial. Additionally, Hall asserted that his trial lawyer gave him constitutionally deficient representation when he failed to object to the admission of a videotape seized from his apartment. The circuit court denied the motion. On appeal, we summarily affirmed. *State v. Hall*, 1997AP1832-CR, unpublished op. and order (WI App Nov. 10, 1998). The Wisconsin Supreme Court denied review.

¶3 Starting in 2007—approximately nine years after we decided his appeal—Hall, *pro se*, filed numerous motions requesting that the circuit court vacate and modify his sentence. His motions were unsuccessful.

¶4 In 2011, Hall moved for postconviction relief under WIS. STAT. § 974.06. The circuit court denied the motion. Hall then moved for a “974.06 rehearing motion to vacate void judgment.” The circuit court denied the motion.

¶5 Two weeks later, Hall filed the “motion to vacate void judgment” that led to this appeal. He argued the judgment of conviction was void due to false

testimony by the victim as to when the crimes occurred, when the victim resided in his apartment, and whether she and Hall had anal sex. The circuit court denied the motion, concluding it was barred. The circuit court explained: “The defendant has raised this issue previously in one form or another. He cannot re[-]raise issues that were previously addressed, and to the extent any part of the issue was not raised, there is no reason[] why it could not have been.”

DISCUSSION

¶6 WISCONSIN STAT. § 974.06 “does not ... create an unlimited right to file successive motions for relief.” *State ex rel. Dismuke v. Kolb*, 149 Wis. 2d 270, 273, 441 N.W.2d 253, 254 (Ct. App. 1989). In *Escalona-Naranjo*, 185 Wis. 2d at 177, 517 N.W.2d at 160, our supreme court explained that § 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion, thereby cutting off successive frivolous motions. 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 § 974.06 motion unless the circuit court ascertains that a sufficient reason exists for the failure to allege or adequately raise the issue earlier. *See Escalona-Naranjo*, 185 Wis. 2d at 181–182, 517 N.W.2d at 162. The procedural bar exists because of the need for finality in litigation. *Id.*, 185 Wis. 2d at 185, 517 N.W.2d at 163. Whether claims in a § 974.06 motion are barred is a question of law we review *de novo*. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175, 176 (Ct. App. 1997).

¶7 Hall does not dispute that he previously raised the issue of whether the judgment of conviction was void due to false testimony by the victim as to when the crimes occurred, when the victim resided in his apartment, and whether

she and Hall had anal sex. Instead, he cites *State v. Hahn*, 2000 WI 118, 238 Wis. 2d 889, 618 N.W.2d 528, in an effort to circumvent *Escalona-Naranjo*'s bar. He submits that under *Hahn*, “a ‘void judgment’ can be pursued under any avenue or method and can[]not be barred by waiver or procedural bar.” We disagree. As the State points out, *Hahn* does not overcome the *Escalona-Naranjo* bar in this case because Hall is not using a means available under state law to challenge a prior conviction; instead, he is attempting to use a means *not* available under state law to challenge his conviction in *this* case, not a different case. See *Hahn*, 2000 WI 118, ¶28, 238 Wis. 2d at 903–904, 618 N.W.2d at 535 (“[T]he offender may use whatever means available under state law to challenge the validity of a prior conviction ... in a forum other than the enhanced sentence proceeding.”).

¶8 Beyond this, Hall offered no reason, much less a sufficient one, for why he should be allowed re-raise his claims. Consequently, we agree with the circuit court that Hall's claims are barred.

¶9 Additionally, as the State notes, in Hall's brief on appeal, he appears to raise issues that were not presented in the underlying “motion to vacate void judgment.” Such issues are not properly before us in the context of this appeal. See *State v. Dowdy*, 2012 WI 12, ¶5, 338 Wis. 2d 565, 571, 808 N.W.2d 691, 694 (“As a general rule, issues not raised in the circuit court will not be considered for the first time on appeal.”). Insofar as Hall asserts in his reply brief that the issues were raised in prior postconviction motions, this argument fails. Hall's *prior* postconviction motions are not the subject of this appeal.

By the Court.—Order affirmed.

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

