

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 21, 2016**

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. 2015AP692  
STATE OF WISCONSIN**

Cir. Ct. No. 2013CF78

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JERMAINE D. GREER, SR.,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
WILLIAM E. HANRAHAN, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.<sup>1</sup> Jermaine D. Greer, Sr., pro se, appeals the decision of the circuit court denying his fourth motion for postconviction relief in

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

which Greer sought to withdraw his guilty plea. Greer argues that the court erred by denying his motion and renews arguments he made to the circuit court supporting his plea withdrawal: (1) that he received ineffective assistance of counsel and (2) prosecutorial misconduct. For the reasons that follow, we conclude that the court properly denied Greer's motion and affirm.

## BACKGROUND

¶2 Greer pled guilty and was convicted of three misdemeanor charges in 2013. Greer filed four postconviction motions seeking various forms of relief subsequent to his conviction. The disposition of the first two motions is not important for the purposes of this appeal. Greer filed his third motion pro se although he was represented by counsel at the time. The court allowed Greer to proceed pro se at a hearing on this motion after granting counsel's motion to withdraw. Greer sought to withdraw his guilty plea arguing that his plea was not entered knowingly, intelligently or voluntarily. The circuit court denied Greer's third motion. Greer did not appeal the court's decision. Greer discharged his attorney and proceeded pro se on his fourth motion for postconviction relief, which is the subject of this appeal. Greer sought to withdraw his guilty plea based on ineffective assistance of counsel and alleged prosecutorial misconduct. The court denied Greer's fourth motion in part because the motion was untimely under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Greer appeals.

## DISCUSSION

¶3 On appeal, Greer argues: (1) the court improperly denied his motion to withdraw his plea, (2) that he received ineffective assistance of counsel, and (3) prosecutorial misconduct. The State contends that Greer's appeal should be

summarily denied because Greer fails to comply with appellate court rules of procedure, including not referring to the record and not providing legal authority in support of his arguments. In the alternative, the State argues that the court properly denied Greer's appeal under *Escalona-Naranjo* because Greer failed to explain in his briefs to the court why he did not raise the issues of ineffective assistance of counsel and prosecutorial misconduct in his previous motions.

¶4 We could dismiss Greer's appeal because, as the State asserts, Greer failed to comply with appellate court rules pertaining to the filing of an appellate brief. *See* WIS. STAT. § 809.83(2). Neither of Greer's briefs cite to the record and neither provides legal authority in support of his purported arguments. Greer's briefs fail to comply with the rules of appellate procedure in other ways. However, we decide this appeal on a different ground. We conclude that this appeal is barred under *Escalona-Naranjo*.

¶5 Repetitious postconviction motions are limited by statute in Wisconsin. WISCONSIN STAT. § 974.06(4) states that:

Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

This requires a criminal defendant to “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Claims that could have been raised on direct appeal or in a previous WIS. STAT. §§ 974.02 or 974.06 motion are barred from being raised in a subsequent § 974.06 postconviction motion absent a showing of

sufficient reason why the claims were not previously raised. *Id.* at 185-86. Whether a claim is barred by *Escalona-Naranjo* is a question of law subject to de novo review. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶6 This is Greer's fourth postconviction motion. He does not explain why the claims he raises in this motion could not have been raised in his third postconviction motion. Greer cannot complain that the failure to raise the claims in this case were caused by postconviction counsel because Greer filed his third postconviction motion pro se. Indeed, Greer did not appeal the circuit court's denial of Greer's third postconviction motion.

¶7 For the above reason, this appeal is barred applying the procedural bar under *Escalona-Naranjo*.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

