

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 22, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

Nos. 96-2527
96-2528

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE EX REL TALIB AMIN AKBAR,

PETITIONER-APPELLANT,

v.

**GARY R. MCCAUGHTRY, WARDEN, AND BROWN COUNTY
WISCONSIN,**

RESPONDENTS-RESPONDENTS.

APPEAL from an order of the circuit court for Brown County:
RICHARD J. DIETZ, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Talib Amin Akbar appeals an order denying habeas corpus relief from his sexual assault convictions. Regardless of whether his petition is construed as a petition for a writ of habeas corpus, a motion under § 974.06, STATS., or a motion alleging newly discovered evidence or requesting a

new trial in the interest of justice, the petition or motion states no basis for relief. Therefore, we affirm the order denying relief.

Akbar alleges that, upon reading the presentence report, he discovered that one of the complaining witnesses committed perjury at trial.¹ He reaches this conclusion because the parole agent listed a specific date for the sexual assault, but the victim testified at trial that she could not remember the specific date. Akbar is entitled to no relief because he has exhausted his postconviction remedies and because, as a matter of law, the alleged newly discovered evidence provides no basis for a new trial.

To the extent Akbar raises issues that could have been raised in his earlier postconviction proceedings, he has not established good cause for his failure to raise these issues at that time and is barred from commencing successive postconviction proceedings regardless of the label placed on his motion or petition. All grounds for postconviction relief must be raised in the initial postconviction proceedings unless the defendant establishes sufficient reason for his failure to assert the issue at an earlier stage. *See State v. Escalona-Naranjo*, 185 Wis.2d 168, 181, 517 N.W.2d 157, 162 (1994). The petition states that Akbar became aware of the “perjury” when he read the presentence report. He has established no reason for his failure to raise that issue in his initial postconviction proceedings.

The petition or motion also fails to allege facts that would sustain a finding of newly discovered evidence. The discovery that a statement by the victim caused the parole agent to write down a specific date for the offense has

¹ The petition raises other issues that Akbar does not pursue on appeal.

little impeachment value regarding the victim's testimony that she could not provide a specific date. The new evidence would not "probably change the result." *See* § 805.15(3)(d), STATS.

By the Court.—Order affirmed.

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

