

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-2693

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL R. WEBER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County:
SUSAN E. BISCHER, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Michael Weber appeals the order denying his motions to vacate the judgment of conviction and sentence, to appoint counsel and to set bond. Weber argues that the circuit court's application of *State v. Escalona-Naranjo*, 185 Wis.2d 168, 517 N.W.2d 157 (1994), requiring a prisoner to raise all grounds regarding postconviction relief in one motion, was improper because

Escalona-Naranjo was published after Weber filed his first motion for postconviction relief. We disagree. Because the date of Weber's original appeal is irrelevant to both *Escalona-Naranjo* and § 974.06, STATS., the circuit court correctly concluded that Weber is barred from bringing any new claims that were not raised in the original motion for postconviction relief. We therefore affirm the order.

Weber was convicted of one count of second-degree sexual assault and sentenced to a stayed ten-year prison term. The court placed Weber on probation for ten years with certain conditions, including one year in the county jail. In 1994, Weber, with the assistance of counsel, filed his first motion for postconviction relief, alleging the existence of new factors requiring a sentence modification. The circuit court modified the terms of the sentence by allowing Weber to serve the remaining three months of his jail time at home under electronic surveillance. Weber's probation was later revoked and the ten-year prison term imposed.

In February 1997, Weber filed another motion alleging negligence in the investigation of his case resulting in illegal delay. The circuit court denied the motion, stating that this issue had been fully litigated in 1993 and should have been directly appealed then. The court reasoned the motion raised an issue fully litigated at trial and that no grounds for relief existed. The court also held that a motion for postconviction relief could not be a substitute for an appeal.

In April 1997, Weber filed an unsigned and undated notice of appeal from his judgment of conviction. The court of appeals dismissed the appeal for failure to pay the filing fee and failure to show good cause why the fee should be waived. In August 1998, Weber filed a motion to vacate his conviction. The

circuit court again denied Weber's motion, citing his failure to raise those grounds in prior postconviction relief motions and his failure to provide any reason why the issues were not previously raised. Weber appeals this order.

This case rests upon statutory construction, which is a question of law, and this court applies a de novo standard of review, deciding the case independently and owing no deference to the circuit court's reasoning. *Escalona-Naranjo*, 185 Wis.2d at 175-76, 517 N.W.2d at 160.

Because the time for appeal of Weber's 1994 conviction and sentence has expired under § 809.30, STATS., this court will consider Weber's motion under § 974.06, STATS. See *State v. Drake*, 184 Wis.2d 396, 399, 515 N.W.2d 923, 925 (Ct. App. 1994) (untimely appeal under § 809.30 will be treated as a § 974.06 motion). Section 974.06(4) requires Weber to raise all grounds on which postconviction relief can be granted in one original, supplemental or amended motion.

Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction ... 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

Section 974.06(4), STATS. (Emphasis added.)

In *Escalona-Naranjo*, our supreme court considered whether one is barred from raising a claim of postconviction relief if he or she could have raised the issue in a prior § 974.06, STATS., motion or on direct appeal. See *id* at 173, 517 N.W.2d at 158-59. The court concluded that absent "sufficient reason" for not raising the claim, a person is barred from raising grounds for relief that have not

been raised in prior § 974.06 motions or on direct appeal. *See id.* at 164, 517 N.W.2d at 185.

In the present case, Weber has filed two prior motions for postconviction relief, one on May 23, 1994, with the assistance of counsel and the other on February 4, 1997, pro se. Neither motion raises the claims Weber advances here: namely, denial of effective assistance of trial counsel, improper arraignment procedure and invalid complaint. In addition, nothing in Weber's latest motion explains why he could not have raised these claims in his earlier motions. Under *Escalona-Naranjo*'s construction of § 974.06, STATS., Weber has failed to consolidate all grounds for postconviction relief in one original, supplemental or amended motion and has failed to provide a sufficient reason for this failure. As a result, Weber may not now raise these claims.

Weber argues that *Escalona-Naranjo* is inapplicable in this case because it was decided after he filed his first motion for postconviction relief. We disagree. First, Weber has provided no authority to support his claim, and this court has no obligation to accept unsupported arguments or even to consider them. *See State v. Flynn*, 190 Wis.2d 31, 39 n.2, 527 N.W.2d 343, 346 n.2 (Ct. App. 1994). Second, Weber's claim is without merit. The day *Escalona-Naranjo* was decided, the supreme court applied the holding to a case in which the appeals process had begun earlier. *See State v. Braun*, 185 Wis.2d 152, 516 N.W.2d 740 (Ct. App. 1994). The court was not pronouncing new law, but interpreting a statute that had been previously interpreted as barring repeated motions for postconviction relief since 1981. *See State v. Rohl*, 104 Wis.2d 77, 93-94, 310 N.W.2d 631, 639-40 (Ct. App. 1981). Weber's contention of *Escalona-Naranjo*'s inapplicability has no authority to support it and is in fact contradicted by existing case law.

Weber also argues that he has “sufficient reason” for not raising all grounds in one original, supplemental or amended motion for postconviction relief because he has been without proper legal counsel and is thus unduly disadvantaged. We disagree. Section 974.06, STATS., makes no exceptions for unrepresented defendants; in addition, Weber’s initial motion for postconviction relief *was* prepared by an attorney. Hence, any and all grounds for relief should have been presented in this first motion under § 974.06. Because Weber in fact had assistance of counsel for his initial motion for postconviction relief, he cannot claim a lack of legal representation as a “sufficient reason” for not raising these claims at that time. Therefore, we conclude that Weber is barred from raising these claims because he failed to raise them in one original, supplemental or amended motion for postconviction relief and cannot establish the necessary “sufficient reason” to overcome § 974.06 and *Escalona-Naranjo*.

Giving Weber’s brief wide latitude, he attempts to raise a subject matter jurisdiction issue. Weber argues that in the instant case the circuit court he was convicted in lacked criminal subject matter jurisdiction and, because such jurisdiction cannot be waived, his conviction must be void. We disagree. Criminal subject matter jurisdiction is the circuit court’s power to “inquire into the charged crime, to apply the applicable law and to declare the punishment.” *State v. Webster*, 196 Wis.2d 308, 316, 538 N.W.2d 810, 813 (Ct. App. 1995). A circuit court’s criminal subject matter jurisdiction is derived from the Wisconsin Constitution,¹ and § 753.03, STATS.,² attaches at the filing of a complaint and

¹ Wisconsin Constitution, art. VII, § 8 (amended 1977), provides:

Except as otherwise provided by law, the circuit court shall have original jurisdiction in all matters civil and criminal within this state and such appellate jurisdiction in the circuit as the

(continued)

continues until the final disposition of the case. *Webster*, 196 Wis.2d at 316-17, 538 N.W.2d at 813. “The circuit court ‘lacks criminal subject[]matter jurisdiction only where the complaint does not charge an offense known to law.’” *Id.* at 317, 538 N.W.2d at 813 (quoted source omitted).

Weber was charged in circuit court. Circuit courts have criminal subject matter jurisdiction over their circuit as prescribed by the Wisconsin Constitution and § 753.03, STATS. *See id.* Weber was charged with second-degree sexual assault of a minor in violation of § 948.02, STATS. The offense Weber was charged with was known to law. *See* § 948.02, STATS. Only when an offense is *not* known to law does criminal subject matter jurisdiction not attach. The charges against Weber were known to law, and therefore we conclude that the circuit court did not lack criminal subject matter jurisdiction.

By the Court.—Order affirmed.

legislature may prescribe by law. The circuit court may issue all writs necessary in aid of its jurisdiction.

² Section 753.03, STATS., provides:

The circuit courts have the general jurisdiction prescribed for them by article VII of the constitution and have power to issue all writs, process and commissions provided in article VII of the constitution or by the statutes, or which may be necessary to the due execution of the powers vested in them. The circuit courts have power to hear and determine, within their respective circuits, all civil and criminal actions and proceedings unless exclusive jurisdiction is given to some other court; and they have all the powers, according to the usages of courts of law and equity, necessary to the full and complete jurisdiction of the causes and parties and the full and complete administration of justice, and to carry into effect their judgments, orders and other determinations, subject to review by the court of appeals or the supreme court as provided by law. The courts and the judges thereof have power to award all such writs, process and commissions, throughout the state, returnable in the proper county.

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

