

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 1, 2005

Cornelia G. Clark
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. 2004AP2628

Cir. Ct. No. 2004CV7646

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. TONY HANIF LEE,

PETITIONER-APPELLANT,

v.

RANDALL R. HEPP WARDEN,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN J. DIMOTTO, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tony Hanif Lee appeals from the order denying his petition for a writ of habeas corpus. He argues that he received ineffective assistance of trial counsel. Because we conclude that he is not entitled to habeas corpus relief, we affirm.

¶2 Lee was convicted in 1986 of first-degree murder as a party to a crime. The court sentenced him to life in prison. He appealed his conviction to this court and we affirmed by summary order. *State v. Lee*, Appeal No. 86-2289-CR (Sept. 30, 1987). In July 2001, Lee filed a motion for postconviction relief under WIS. STAT. § 974.06 (1999-2000).¹ The circuit court denied the motion. Lee filed an appeal to this court, but the appeal was dismissed when Lee did not file a brief. In 2004, Lee filed the petition for a writ of habeas corpus. The State moved to dismiss on the grounds that habeas corpus relief was not available to Lee, and that he had not demonstrated a reason why he had not raised the issue in his § 974.06 motion. We agree with the circuit court's conclusion.

¶3 Habeas corpus relief is available only when: (1) the party seeking habeas corpus relief must be restrained of his or her liberty; (2) the person's restraint must have been imposed by a tribunal without jurisdiction over the person or subject matter, or the restraint must have occurred contrary to constitutional protections; and (3) the person improperly restrained must have no other adequate remedy available in the law. *State ex rel. Fuentes v. Wisconsin Court of Appeals*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999).

¶4 In *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), the supreme court stated:

We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, all of which could have been brought at the same time, run counter to the design and purpose of the legislation.

¹ All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Id. at 185. A defendant must raise all grounds of relief in his original supplemental or amended motion for postconviction relief. *Id.* at 181. 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 new postconviction motion, unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Id.* at 181-82. Similarly, habeas relief is not available when the appellant could have raised the issue on direct appeal but did not do so, and does not offer a valid reason for that failure. *State ex rel. LeFebvre v. Israel*, 109 Wis. 2d 337, 342, 325 N.W.2d 899 (1982).

¶5 In this case, Lee is in prison pursuant to a judgment of conviction for first-degree murder and there is no question that the circuit court had jurisdiction to enter that judgment. Further, Lee had an opportunity to raise his ineffective assistance of trial counsel claim in both his direct appeal and in his WIS. STAT. § 974.06 motion. We agree with the circuit court that he has not offered a sufficient reason for his failure to do so. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

