

**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. 2004AP775

Cir. Ct. No. 1995CF952157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT 1**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NATHAN J. PETTIGREW,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Nathan Pettigrew appeals from the order denying his motion for a new trial. This was Pettigrew's fifth motion for postconviction relief. He argues on appeal that the circuit court erred when it declined to hold a hearing on his motion. The State argues that Pettigrew is simply repeating claims

he has previously raised, and asks the court to consider imposing limitations on Pettigrew's litigation in this case. We conclude that Pettigrew's motion is procedurally barred by WIS. STAT. § 974.06 (2003-04)¹ and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We affirm the order of the circuit court.

¶2 Pettigrew was convicted of first-degree sexual assault and sentenced to sixteen years in prison. This court affirmed. *State v. Pettigrew*, No. 96-0980-CR, unpublished slip op. (Wis. Ct. App. Apr. 8, 1997). Pettigrew then filed a motion for postconviction relief. The circuit court determined that the motion was barred by *Escalona-Naranjo*. This court construed the motion to have been brought under WIS. STAT. § 974.06, and affirmed. The trial court also denied a second motion for postconviction relief under *Escalona-Naranjo*. Pettigrew did not appeal but sought habeas corpus relief. We denied that petition. The circuit court also denied Pettigrew's third motion for postconviction relief. In his fourth motion for postconviction relief, Pettigrew raised an ineffective assistance of postconviction counsel claim. The circuit court denied the motion. We affirmed, concluding that the issues were procedurally barred under WIS. STAT. § 974.06 and *Escalona-Naranjo*.

¶3 The motion that is the subject of this appeal is Pettigrew's fifth motion for postconviction relief. Once again the circuit court determined that the motion was barred by *Escalona-Naranjo*, and once again we affirm. Pettigrew

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

has not offered a sufficient reason why he did not raise these issues in his direct appeal or his previous four motions.

¶4 In addition, the State asks the court to impose limitations on Pettigrew's litigation of this case. The State asks that the court impose the limitations established in *State v. Casteel*, 2001 WI App 188, 247 Wis. 2d 451, 634 N.W.2d 338. In *Casteel*, we concluded that the appeal was frivolous and sanctioned the appellant by imposing requirements for filing future appeals. *Id.* at 247 Wis. 2d 451, ¶25. In that case, however, the appellant had been warned that a previous appeal was frivolous, and that if he continued to file frivolous appeals, he would be sanctioned. *Id.*, ¶20. Pettigrew has not yet received such a warning. We provide one now. If Pettigrew continues to file motions and appeals without offering a sufficient reason why he did not litigate the issue previously, we will declare the appeal to be frivolous, and we will impose appropriate sanctions. *See* WIS. STAT. RULE 809.25(3). For the reasons stated, 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.

