**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**April 18, 2006**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP1489-CR** **Cir. Ct. No. 1986CF6484**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LARRY WAYNE ECHOLS,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Larry Wayne Echols appeals from an order denying his WIS. STAT. § 974.06 (2003-04)[1] postconviction "Motion to Modify

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

Sentence." His motion is based upon an assertion that a change in the definition of "intent to kill" presents a "new factor" not known to the trial judge at the time of sentencing, which justifies sentence modification. Because Echols's motion is barred by the rubrics of ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), we affirm.

BACKGROUND

¶2 On June 3, 1988, Echols was convicted of first-degree murder contrary to WIS. STAT. § 940.01 (1985-86), and was sentenced to a mandatory term of life in prison. Echols filed a motion for postconviction relief, which the trial court denied. On direct appeal, this court affirmed the judgment of conviction and order denying postconviction relief.

¶3 Since that time, Echols has filed three motions for postconviction relief under WIS. STAT. § 974.06. The trial court denied all three motions. Echols appealed one of those motions, which this court subsequently affirmed in November 1993.

¶4 In 1994, Echols filed a motion for federal *habeas corpus* relief under 28 U.S.C. § 2254 in the United States District Court for the Eastern District of Wisconsin claiming he was denied effective assistance of appellate counsel. This motion was denied by the district court and judgment was affirmed by the Seventh Circuit, which held that Echols had not exhausted all available state remedies.

¶5 Finally, in 2001, Echols petitioned this court for a writ of *habeas corpus*, alleging that appellate counsel was ineffective for failing to argue that his trial counsel was ineffective. This court denied the petition, holding that the

matter had already been litigated. Echols has filed several other motions with the trial court, each of which was summarily denied.[2]

¶6 Echols's most recent motion asks the court to modify his sentence based on a "new factor" not known to the trial court at the time of his sentencing. Echols bases his argument on a new definition of "intent to kill" that became effective January 1, 1989. The trial court denied the motion because no "new factor" was present that could not have been raised in any of Echols's prior motions. Because his argument was not raised in his previous appeals, the trial court declared he was precluded from raising it now pursuant to ***Escalona-Naranjo***. Echols now appeals.

ANALYSIS

¶7 Issues that have been finally adjudicated, waived, or not raised in a prior postconviction motion or appeal cannot be raised in a WIS. STAT. § 974.06 motion unless there is "sufficient reason" for failing to raise them in the original motion. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185. In ***State v. Evans***, 2004 WI 84, ¶33, 273 Wis. 2d 192, 682 N.W.2d 784, our supreme court further explained the implications of ***Escalana-Naranjo***, declaring the rule set forth in ***Escalana-Naranjo*** is designed to ensure finality in prisoner litigation and to "'compel[] a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all

[2] Echols's other motions include a motion for sentence modification and a motion to amend the judgment of conviction to reflect a name change. Each was denied for reasons with no bearing on this decision.

could have been brought at the same time, run counter to the design and purpose of the legislation.'" ***Evans***, 273 Wis. 2d 192, ¶33 (citation omitted).

¶8 This court need not address the substantive portion of Echols's appeal because under ***Escalona-Naranjo***, he is procedurally barred from raising the issue.[3] The trial court has previously denied Echols's direct appeal and all three of his motions for relief under WIS. STAT. § 974.06. Because the current issue was not previously raised in any of Echols's previous appeals, the issue is barred under ***Escalona-Naranjo*** unless the appellant provides a "sufficient reason" for failing to raise the issue in the original motion. Echols has made no attempt in either of his briefs to explain why he has not provided the court with any reason why he could not have raised this issue in a previous appeal. The proper time for this appeal has long since passed. Thus, his appeal fails.

*By the Court.*—Order affirmed.

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

[3] However, even if this court were to entertain this appeal, this court is not convinced that a revision to a statute is a "new factor" that justifies a sentence modification nor is it convinced that the sentence given to Echols is in any way frustrated by the change of law.