

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 18, 2006

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. 2005AP1449

Cir. Ct. No. 2002CF659

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN E. ISOM,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MICHAEL B. BRENNAN, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. John Isom appeals from the order denying his motion for postconviction relief. He raises various claims of ineffective assistance of postconviction counsel, and asserts that the circuit court erred in denying his

motion without an evidentiary hearing. Because we conclude that the trial court did not err, we affirm.

¶2 Isom was convicted of delivery of cocaine as a party to a crime, and felon in possession of a firearm, both as an habitual offender. The court sentenced him to seven years of initial confinement and twelve years of extended supervision. After his appointed postconviction counsel advised him that she saw no issues of arguable merit in his appeal, Isom discharged her and he represented himself. *See State ex rel. Isom v. Endicott*, No. 2004AP3200-W, unpublished order (WI App Jan. 14, 2005) (describing the procedural history of Isom's case).

¶3 Isom then filed a motion for postconviction relief under WIS. STAT. § 974.06, alleging a variety of errors including, among other things, ineffective assistance of trial counsel, right to a fair trial, and double jeopardy. The circuit court denied the motion without a hearing, finding that Isom had made only conclusory allegations in support of his argument. Isom appealed, and this court affirmed. *State v. Isom*, No. 2003AP1025, unpublished order (WI App July 27, 2004). Isom then brought a petition for a writ of *habeas corpus* asserting that he had received ineffective assistance of postconviction counsel. Specifically, he alleged that his counsel had abandoned him because she did not describe the no-merit procedure to him. This court denied the petition, holding that Isom's documents established that he gave postconviction counsel permission to close his file. *State ex rel. Isom v. Endicott*, No. 2004AP3200-W, unpublished order (WI App Jan. 14, 2005).

¶4 In May 2005, Isom filed the motion for postconviction relief that is the subject of this appeal. He alleged a variety of grounds including ineffective assistance of postconviction counsel and ineffective assistance of trial counsel,

that he had been denied a fair trial and a fair adjudicator, and that there were new factors that entitled him to be resentenced. The circuit court denied the motion, concluding that he had not shown new factors that entitled him to be resentenced, and that his other claims were barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). In this appeal, Isom renews his claims of ineffective assistance of counsel, and asserts that the trial court erred when it did not hold an evidentiary hearing on his claims. He does not raise the sentencing issues.

¶5 In *Escalona-Naranjo*, the Wisconsin 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, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Id. at 185. Consequently, a criminal defendant must raise all postconviction claims in one motion or appeal. Issues that have already been adjudicated, waived, or not raised in a prior postconviction motion cannot be raised in a WIS. STAT. § 974.06 motion unless the defendant alleges a sufficient reason for not raising them in the original motion. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. In this case, Isom raised claims of ineffective assistance of trial and postconviction counsel in his previous postconviction motion and *habeas* petition. To the extent he has asserted new claims, he did not offer a sufficient reason for not raising them previously. Because the trial court properly determined that his claims were barred, the court also did not erroneously exercise its discretion when it declined to hold an evidentiary hearing on his motion. See *State v. Bentley*, 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996). For these reasons, 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.

