

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 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. 2005AP2304

Cir. Ct. No. 2000CF6205

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARMOND N. HENDERSON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Armond N. Henderson appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)¹ postconviction motion.

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

Henderson contends the trial court erred in ruling that his claims were procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Because Henderson failed to raise any issues in his direct (no-merit) appeal, and failed to provide this court with sufficient reason for not raising the issues in the direct (no-merit) appeal, we conclude that the trial court did not err in ruling that Henderson is procedurally barred from raising the claims in this appeal. Accordingly, we affirm.

BACKGROUND

¶2 In December 2000, Henderson was charged with a single count of felony murder, party to the crime, with the underlying crime being an armed robbery. In April 2001, he entered a negotiated guilty plea to a reduced charge of first-degree reckless homicide, party to the crime. He was subsequently sentenced to thirty years in prison, consisting of twenty years of initial confinement and ten years of extended supervision.

¶3 Henderson's appointed counsel filed a direct "no-merit" appeal in early 2003, briefing the issues of Henderson's guilty plea and sentencing. Henderson did not file a response to counsel's no-merit report. On April 8, 2003, we summarily affirmed Henderson's conviction, concluding that no meritorious challenges could be raised to those issues briefed or to any other issue.

¶4 There was no other activity in this case until the spring of 2004 when Henderson filed a *pro se* petition for a writ of *habeas corpus* in this court pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). He alleged that his appellate counsel was ineffective for failing to allege that the State breached the plea agreement and for failing to allege that the plea colloquy was inadequate. We denied the petition on the grounds that these issues had been waived.

¶5 More than a year later, on August 16, 2005, Henderson filed a *pro se* postconviction motion under WIS. STAT. § 974.06 seeking plea withdrawal or sentence modification. He alleged that his plea was not knowingly entered and that the State breached the plea agreement. The trial court summarily denied the motion, ruling that Henderson was procedurally barred from raising these issues, pursuant to *Escalona-Naranjo*. Henderson now appeals from that order to this court.

DISCUSSION

¶6 Henderson claims his plea was not knowingly entered and that he did not understand the effect of “read-in” charges at sentencing. He contends that trial counsel, postconviction counsel, and appellate counsel provided ineffective assistance for failing to raise these issues. He also argues that the trial court should have conducted an evidentiary hearing on these claims. We reject Henderson’s arguments.

¶7 The trial court summarily denied Henderson’s motion under the rule of *Escalona-Naranjo* because Henderson himself had the opportunity to raise the motion’s claims in a response to his appellate attorney’s no-merit report during his direct appeal from his 2001 conviction, and because Henderson failed to do so. Henderson filed no response to his appellate attorney’s no-merit report. We agree with the trial court that, under such circumstances, Henderson is procedurally barred from attempting to raise these issues now.

¶8 Defendants are not permitted to pursue an endless succession of postconviction remedies:

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.

Escalona-Naranjo, 185 Wis. 2d at 185. Thus, claims which could have been, but were not, raised in a prior postconviction motion or on direct appeal, are procedurally barred unless a sufficient reason for failing to raise the issue is presented. *Id.*

¶9 Henderson could have raised these issues in his response to the no-merit report during his direct appeal. He did not raise these issues or file a response at all. Further, Henderson has failed to provide a “sufficient” reason for his failure. He argues first, that a sufficient reason is not necessary because he suffered a manifest injustice. The record and the law reflect neither. Second, he contends that a sufficient reason is his lack of knowledge that a claim existed. We are not convinced that such constitutes “sufficient reason.” Thus, we conclude that when Henderson abandoned his right to make these assertions by not filing a response to the no-merit report, he waived his right to raise these issues years later via WIS. STAT. § 974.06. The *Escalona-Naranjo* rules apply with equal force where the direct appeal was conducted pursuant to the no-merit process of WIS. STAT. § 809.32. See *State v. Tillman*, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574 (The procedural bar applies to defendants whose direct appeal was via the no-merit procedure, as long as the no-merit procedures were in fact followed, and the record demonstrates a sufficient degree of confidence in the result.).

¶10 Here, Henderson’s direct appeal proceeded via the no-merit procedure. His attorney filed a no-merit report and Henderson declined to file any response. This court then reviewed all of the issues raised and conducted an

independent review of the record. After such, we concluded that Henderson's judgment should be affirmed because the record did not contain any meritorious issues. Based on this review, we conclude that the no-merit procedures were, in fact, followed and that the record demonstrates a sufficient degree of confidence in the result. Because Henderson had the opportunity to raise the issues he now asserts during the no-merit appeal, he is barred from attempting to raise them here.

¶11 Based on the foregoing, we conclude that the trial court did not err in summarily denying Henderson's postconviction motion based on the procedural bar of *Escalona-Naranjo*.

By the Court.—Order affirmed.

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

