

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 17, 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. 2005AP3059

Cir. Ct. No. 1996CF960856

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TINGIA WHEELER,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
ELSA C. LAMELAS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Tingia Wheeler appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)¹ motion. Wheeler claims the trial

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

court erred in ruling that his claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) and *State v. Tillman*, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. Because Wheeler failed to raise these 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 Wheeler is procedurally barred from raising the claims in this appeal. Accordingly, we affirm.

BACKGROUND

¶2 On May 29, 1996, a jury found Wheeler guilty of first-degree reckless homicide while armed. In September 1997, Wheeler's postconviction counsel filed a postconviction motion alleging: ineffective assistance of trial counsel and that Wheeler's statements to police were coerced. The trial court conducted a hearing on the motion in December 1997. At the conclusion of the hearing, Wheeler's motion was denied.

¶3 In June 1998, Wheeler's appellate counsel filed a no-merit direct appeal. In conformance with the no-merit procedure, Wheeler filed a response to the no-merit report. On March 3, 1999, this court entered an opinion summarily affirming the judgment and postconviction order, concluding that there was no merit to Wheeler's claims of error.

¶4 On September 21, 2005, Wheeler filed a *pro se* motion to vacate the judgment of conviction pursuant to WIS. STAT. § 974.06. Wheeler claimed that: (1) he received ineffective assistance of trial and postconviction counsel; (2) the police lacked probable cause to arrest him; (3) the magistrate's determination that probable cause existed was not valid; and (4) the trial court erred in admitting into evidence statements that were involuntarily signed.

¶5 The trial court denied Wheeler's WIS. STAT. § 974.06 motion on procedural grounds. Wheeler filed a motion seeking reconsideration, which was also denied. He now appeals.

DISCUSSION

¶6 Wheeler claims that because he received ineffective assistance of counsel, the *Escalona-Naranjo* procedural bar should not apply in that his appellate counsel's ineffective assistance provided sufficient reason for failing to have previously raised the claims asserted here. We reject his contention.

¶7 Wheeler's direct appeal proceeded through the no-merit process. His appellate attorney filed a no-merit report, which addressed: (1) whether a five-day delay in charging Wheeler after he was detained deprived the court of jurisdiction or provided a basis for suppressing a statement he made during that time; (2) whether the State presented sufficient evidence to support the verdict; (3) whether the court properly instructed the jury; and (4) whether the court properly exercised its sentencing discretion. Wheeler then submitted a response to the no-merit report challenging counsel's conclusions that there would be no merit to the precharging detention and sentencing issues. This court reviewed the report, the response, and the record and concluded that there were no meritorious issues for appeal.

¶8 Wheeler now raises several additional issues, which were not raised during his direct appeal. He is procedurally foreclosed from doing so. 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 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 *Tillman*, 281 Wis. 2d 157, ¶¶19-20, (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, the record demonstrates that the no-merit process procedures were followed and the record further demonstrates a sufficient degree of confidence in the result. This court reviewed the issues raised in the no-merit report, in Wheeler's response, and any other potentially meritorious issues, which necessarily included whether appellate counsel provided ineffective assistance. We concluded that there were no meritorious issues. Accordingly, under these circumstances, Wheeler has failed to demonstrate that any sufficient reason exists for failing to raise the issues he raises now during his earlier appeal.

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

By the Court.—Order affirmed.

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

