

**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. 2004AP2643**

**Cir. Ct. No. 1999CF5947**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**THOMAS J. MCPHETRIDGE,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County:  
DANIEL L. KONKOL, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Thomas J. McPhetridge appeals from an order summarily denying his successive postconviction motion. We conclude that McPhetridge's reasons for failing to raise, or attempting to resurrect previously raised, issues – the alleged significance of these issues and his *pro se* status – are

insufficient to overcome the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Therefore, we affirm.

¶2 A jury found McPhetridge guilty of first-degree sexual assault of his girlfriend's twelve-year-old daughter, in violation of WIS. STAT. § 948.02(1) (1999-2000). After disagreeing with appointed counsel's assessment of his case, McPhetridge insisted on proceeding *pro se* in postconviction proceedings, filing numerous motions.<sup>1</sup> On June 7, 2001, the trial court denied two of McPhetridge's *pro se* postconviction motions, warning him that

only one postconviction motion will be entertained, as a defendant is not entitled to file multiple postconviction motions. All issues must be set forth in one motion within the appellate deadline, and subsequent motions will not be entertained. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 179[, 517 N.W.2d 157] (1994). The defendant has opted to proceed *pro se* in this case; he is therefore obliged to proceed wi[th] full regard to the law.

¶3 On January 8, 2002, the trial court denied two more of McPhetridge's *pro se* postconviction motions. In that order, the trial court again warned McPhetridge that he "could have raised these issues previously. This court will not entertain successive motions where all issues could have been raised in the defendant's initial motion. McPhetridge has filed motion after motion in this court, and the time has come to end this practice." After listing ten of McPhetridge's *pro se* postconviction motions filed in the previous nine months, the trial court continued, "[t]he court will not entertain further motions from the defendant. He has had ample opportunity to raise all issues, and his *pro se* status does not give him special leave to submit continuous filings." It is from that

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<sup>1</sup> The postconviction order from which McPhetridge pursued his direct appeal set forth ten *pro se* postconviction motions.

postconviction order that McPhetridge pursued a direct appeal in which we consolidated his multitude of issues into seven categories. We affirmed the judgment of conviction and the postconviction orders. *See State v. McPhetridge*, No. 2002AP0263-CR, unpublished slip op. at 9 (WI App Jan. 14, 2003) (“*McPhetridge I*”).

¶4 McPhetridge then filed the postconviction motion, pursuant to WIS. STAT. § 974.06 (2003-04), which is the subject of this appeal.<sup>2</sup> In that motion, McPhetridge raises a plethora of issues. His reason for failing to raise these issues previously, or insofar as he had previously raised these issues, he

request[s] this court [to] find the grounds for relief which, while appearing pro se, are of sufficient reason[] for the issues raised inadequately in original and amended direct appeal motions to allow further demonstration of the inadequate representation causing the denial of material exculpatory and impeachment evidence requested and denied, that would have undermined the confidence in the outcome of the judicial proceedings.

At the conclusion of his supporting memorandum, he reiterates:

WHEREFORE, Defendant respectfully prays this court find sufficient grounds for requested relief which for sufficient reasons were not adequately asserted in the original direct appeal, and find the infringements of protected rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution are of significance to cause vacating judgment of conviction and sentence.

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

The trial court denied that postconviction motion as procedurally barred by *Escalona* and *State v. Walberg*, 109 Wis. 2d 96, 103, 325 N.W.2d 687 (1982).<sup>3</sup>

¶5 A postconviction movant must raise all grounds for postconviction relief on direct appeal (or in his or her original, supplemental or amended postconviction motion) unless, in a subsequent postconviction motion, he or she alleges a sufficient reason for failing to previously raise these issues. *See Escalona*, 185 Wis. 2d at 185-86. Whether McPhetridge's reasons for failing to raise or for attempting to resurrect these (allegedly inadequately presented) issues previously were sufficient to overcome *Escalona*'s procedural bar is subject to an independent standard of review. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶6 We independently conclude that McPhetridge's reasons for failing to previously raise these issues, or attempting to resurrect these previously raised issues – their materiality and his admittedly inadequate ability to represent himself – are insufficient to overcome *Escalona*'s procedural bar. McPhetridge was warned of the perils of proceeding *pro se*, but insisted on representing himself. He was expressly warned as of June 7, 2001, and presumably before, that his *pro se* status did not relieve him of his obligations to follow the law. By electing to proceed *pro se*, he forfeited his claim that his unfamiliarity with the law excused his missteps in attempting to further litigate issues from his judgment of conviction and sundry postconviction motions and orders. We therefore decline to

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<sup>3</sup> These cases stand for the proposition that a motion filed pursuant to WIS. STAT. § 974.06 may not be used to raise issues that were not previously raised on direct appeal or in a defendant's original postconviction motion (*Escalona*), or for issues which were previously litigated (*Escalona* and *Walberg*). *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994); *State v. Walberg*, 109 Wis. 2d 96, 103, 325 N.W.2d 687 (1982).

consider McPhetridge's issues because they are procedurally barred. *See Escalona*, 185 Wis. 2d at 185-86.<sup>4</sup>

*By the Court.*—Order affirmed.

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

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<sup>4</sup> Our decision also warrants denial of McPhetridge's motions for relief pending appeal and for reconsideration of our August 7, 2006 order.

