

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 24, 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. 2005AP2178

Cir. Ct. No. 2000CF4559

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALONZO J. GRAY,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Alonzo Gray appeals from the judgment of conviction and the order denying his motion for postconviction relief. He argues on appeal that the circuit court erred when it denied without a hearing his motion

for postconviction relief under WIS. STAT. § 974.06 (2003-04).¹ We conclude that the circuit court properly denied his motion and we affirm the judgment and order.

¶2 In 2000, Gray pled guilty and was convicted of first-degree reckless homicide by the use of a dangerous weapon, for the shooting death of Tyrone Burdine. The court sentenced him to forty years in prison. Gray appealed, and his appellate counsel filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32 (2001-02). Gray filed a response to the report. This court independently reviewed the record and agreed with counsel's conclusion that there were no potential issues of arguable merit to his appeal. We affirmed the conviction. *State v. Gray*, Appeal No. 01-3006-CRNM, unpublished slip op. (Wis. Ct. App. Apr. 30, 2002).

¶3 In July 2005, Gray filed, *pro se*, a motion for postconviction relief under WIS. STAT. § 974.06. The circuit court denied the motion by an order dated July 19, 2005. That court concluded that Gray's motion was 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. Gray now appeals from that order.

¶4 In *Escalona*, the 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.

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

Escalona, 185 Wis. 2d at 185. A defendant must raise all grounds of relief in his or her original supplemental or amended motion for postconviction relief. *Id.* at 181. If a defendant's grounds for relief have been finally adjudicated, waived or not raised in a prior postconviction motion, they may not become the basis for a new postconviction motion, unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Id.* at 181-82.

¶5 In *Tillman*, this court ruled that “when a defendant’s postconviction issues have been addressed by the no-merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously. *See Escalona-Naranjo*, 185 Wis. 2d at 181-82.” *Tillman*, 281 Wis. 2d 157, ¶19. This, however, is not an ironclad rule. *Id.*, ¶20. In considering whether to apply this procedural bar, both the appellate and the trial court “must pay close attention to whether the no merit procedures were in fact followed.” *Id.* The courts must also consider whether the procedure “carries a sufficient degree of confidence warranting the application of the procedural bar under the particular facts and circumstances of the case.” *Id.*

¶6 We agree with the circuit court’s conclusion that all of the issues Gray raised in this motion for postconviction relief were, or could have been, raised in the no-merit report and the response. Further, Gray has not offered a sufficient reason for not raising those issues previously. In response to the no-merit report, Gray argued that his plea was involuntary and that his confession should have been suppressed because it was coerced and obtained in violation of his right to counsel. This court also considered whether the circuit court erred when it sentenced Gray, and whether Gray received ineffective assistance of trial

counsel. In his motion for postconviction relief, Gray argued that he was arrested without a warrant, that his confession was coerced, that he was deprived of his right to counsel, and that he received ineffective assistance of trial and postconviction counsel.

¶7 The court previously addressed the issues of whether Gray's confession was coerced, whether he was deprived of his right to counsel, and whether he received ineffective assistance of trial counsel. He also argued that he was arrested without a warrant. He does not explain, however, why he did not raise this issue in his response to the no-merit report. These issues are barred by *Escalona* and *Tillman*.

¶8 The only remaining issue is whether he received ineffective assistance of postconviction counsel. Gray, however, has not explained how he was prejudiced by his postconviction's counsel's alleged inadequacies. To establish prejudice in the context of a guilty plea, the appellant must show that there is a reasonable probability that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Gray has not done this. Consequently, we conclude that the circuit court properly denied his motion for postconviction relief.

By the Court.—Judgment and order affirmed.

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

