

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 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. 2006AP509

Cir. Ct. No. 1998CF2875

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHNNY L. MILLER,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Johnny L. Miller appeals *pro se* from orders denying his WIS. STAT. § 974.06 (2003-04)¹ motion. Miller claims the trial court

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

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. He argues that his right to a speedy trial was violated and that his postconviction counsel's ineffective assistance acts as a sufficient reason for failing to previously raise this issue. Because Miller's direct appeal proceeded through this court via the no-merit procedure, wherein this court concluded that there were no meritorious issues for review, we conclude that the trial court did not err in ruling that Miller is procedurally barred from raising the claims in this appeal. Accordingly, we affirm.

BACKGROUND

¶2 On October 7, 1998, a jury found Miller guilty on six counts of burglary and one count of attempted burglary as party to a crime and a habitual criminal. Miller was sentenced to a total of sixty-nine years and six months in prison. In March 1999, Miller filed motions for postconviction relief and sentence modification, both of which were denied by the trial court. Miller's counsel then filed a second motion for postconviction relief, which was denied in April 1999. A notice of appeal was filed on May 11, 1999, but the appeal was voluntarily dismissed on July 16, 1999.

¶3 In December 1999, Miller's new postconviction counsel filed a petition for a new trial under WIS. STAT. § 809.30, alleging ineffective assistance of trial counsel. The trial court denied the motion on March 8, 2000. Miller then filed a notice of appeal on April 20, 2000. Miller's counsel filed a no-merit report in this court and Miller filed a response. On December 19, 2001, we affirmed the judgment of conviction, ruling that there were no meritorious issues for appeal.

Miller's petition for review by the Wisconsin Supreme Court was denied on April 22, 2002.

¶4 On January 26, 2006, Miller filed a WIS. STAT. § 974.06 motion alleging that he was denied the effective assistance of trial counsel and postconviction counsel and that appellate counsel's failure to raise on appeal the claim for violation of his right to a speedy trial constituted sufficient reason to allow him to raise the claim collaterally. The trial court denied the motion. Miller then filed a motion seeking reconsideration of that denial. The trial court denied the motion for reconsideration as well. Miller now appeals from the orders denying his postconviction motion and motion for reconsideration.

DISCUSSION

¶5 Miller contends that the trial court erred in denying his postconviction motion, alleging ineffective assistance of counsel regarding his claim that his speedy trial right was violated, and proffering ineffective assistance of appellate counsel as a sufficient reason to avoid the procedural bar. We affirm the trial court.

¶6 The trial court denied Miller's motions on the grounds that Miller could have, but did not, raise these claims during the previous postconviction proceedings. The purpose of the procedural bar was set forth in *Escalona-Naranjo*:

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.*

¶7 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.).

¶8 Here, the record demonstrates that the no-merit process procedures were followed and that there is a sufficient degree of confidence in the result. This court reviewed the issues raised in the no-merit report, in Miller's response, and any other potentially meritorious issues, which necessarily included his right to a speedy trial and whether counsel provided ineffective assistance. We concluded that there were no meritorious issues. Accordingly, under these circumstances, Miller has failed to demonstrate that any sufficient reason exists for failing to raise the issues he raises now during his earlier postconviction proceedings/appeal.

¶9 Based on the foregoing, we conclude that the trial court did not err in summarily denying Miller's postconviction motion based on the procedural bar of *Escalona-Naranjo* and *Tillman*.²

² This case is distinguishable from our recent decision in *State v. Fortier*, 2006 WI App 11, 289 Wis. 2d 179, 709 N.W.2d 893. Here, the no-merit procedures were followed and do carry a sufficient degree of confidence to warrant application of the procedural bar. Such was not the case in *Fortier*.

By the Court.—Orders affirmed.

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

