

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 5, 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. 2005AP84
STATE OF WISCONSIN**

**Cir. Ct. No. 1994CF940199
IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

QUENTIN CORTEZ WARD,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Quentin C. Ward appeals *pro se* from the circuit court's denial of his motion for sentence modification, ostensibly filed under WIS. STAT. §§ 973.01 and 973.19(2) and pursuant to the circuit court's "inherent power to modify a sentence." The circuit court denied Ward's postconviction motion, his

fifth. We agree with the State that Ward's motion was procedurally barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 184-85, 517 N.W.2d 157 (1994) (defendant barred from raising in postconviction motion claims that could have been raised in prior postconviction and appellate proceedings, unless defendant articulates a sufficient reason for that failure). We therefore affirm the circuit court's order for reasons other than those articulated in the circuit court's order.

¶2 We repeat the background, which we set forth in our 2003 opinion and order affirming the denial of Ward's request for postconviction relief:

In 1994, Ward entered no-contest pleas to counts of first-degree recklessly endangering safety, second-degree sexual assault, and armed robbery. Ward was appointed postconviction counsel, but counsel withdrew when Ward decided to proceed *pro se*. On April 10, 1995, Ward filed a postconviction motion under WIS. STAT. RULE 809.30 (1993-94), which he supplemented on May 8, 1995. The motion and supplement raised three issues. The circuit court denied the motion, and Ward appealed. Ward then sought dismissal of his appeal, so that he could file an additional postconviction motion. This court granted that request, and Ward filed a new motion for postconviction relief in the circuit court on August 4, 1995.

The new motion raised eleven issues. Before the circuit court could rule on this motion, however, Ward filed a new postconviction motion on August 15, 1995, in which he raised an additional six issues. On the same date, the circuit court denied Ward's August 4th motion. Ward appealed to this court. We affirmed.

On February 26, 2002, Ward filed a WIS. STAT. § 974.06 postconviction motion in which he argued that the State, which had agreed as part of the plea bargain to refrain from recommending sentences of any particular length, breached the bargain by recommending consecutive sentences. He argued that his trial counsel was ineffective for failing to object to this alleged breach. He also maintained that his trial counsel was ineffective for failing to investigate a police report filed by the victim that would have demonstrated the victim had earlier claimed as stolen

some or all of the same items she had accused him of stealing. Finally, he contended that his postconviction counsel had been ineffective when he withdrew from further representation. The circuit court denied Ward's postconviction motion, reasoning that it was procedurally barred under *Escalona-Naranjo* because Ward could have raised these issues in prior postconviction proceedings.

On appeal, this court affirmed the circuit court's reasoning that Ward's postconviction motion was barred because he failed to articulate any reason for his failure to raise the new issues in his original postconviction motions.

¶3 Ward then filed the motion that is the subject of this appeal, in which he requested sentence modification based upon what he termed were "new factors." His first claim was that the circuit court should shorten his sentences because he would not be eligible for alcohol and other drug treatment until one year from his mandatory release date. Second, he argued that the State violated the plea agreement by arguing for consecutive sentences, when it had agreed that it would not make a specific sentencing recommendation other than to argue for substantial prison time. Third, he argued that his sentences should be modified based on a "radical reduction in parole grants." Fourth, he argued that the circuit court erroneously exercised sentencing discretion by deviating from the sentencing guidelines and imposing harsher sentences than those warranted under the guidelines.

¶4 The circuit court denied Ward's motion, noting first that Ward's two prior motions had been "denied pursuant to [*Escalona-Naranjo*]" and concluding that Ward's "current motion suffers the same fate." In regard to Ward's claim that the State violated the plea bargain, the court noted that Ward could have and should have raised this issue in earlier postconviction motions. It also noted that claim could not serve as the basis for sentence modification. In regard to Ward's

lack-of-treatment claim, the circuit court reasoned that lack of resources in the prison system is not a reason to modify a sentence. The circuit court rejected Ward's third claim regarding reduction in parole grants pursuant to *State v. Franklin*, 148 Wis. 2d 1, 14, 434 N.W.2d 609 (1989) (change in parole policy not relevant to sentencing "unless parole policy was actually considered by the circuit court"). Finally, the circuit court rejected Ward's contention that the circuit court erroneously exercised sentencing discretion, because the motion was untimely.

¶5 Ward appeals, contending that the circuit court's rulings were incorrect. We disagree and affirm.

¶6 Even were we to assume that Ward had not argued in prior postconviction proceedings that the State violated the plea bargain by recommending consecutive sentences and that the circuit court erroneously exercised sentencing discretion, they are both barred by *Escalona-Naranjo*, 185 Wis. 2d at 185 (issue not raised in prior postconviction or appellate proceedings may not be raised in subsequent proceedings absent a sufficient reason for failure to raise it in earlier proceedings). In his motion, Ward failed to articulate any reason, much less a sufficient reason, for his failure to raise these issues in his earlier postconviction proceedings. In addition, Ward's contention regarding the plea breach is also barred because it was litigated and rejected in Ward's most recent postconviction motion and appeal. *Cf. Univest Corp. v. General Split Corp.*, 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989) ("a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings").

¶7 Similarly, Ward's claims regarding lack of adequate treatment in prison and changes in parole policy are barred because they could have been

raised in his prior motions. As noted, Ward was sentenced twelve years ago. The changes in parole policy that he claims constituted a “new factor” warranting sentence modification took place in 1994, yet he failed to raise this issue in his four prior postconviction motions and he has failed to articulate a reason for that failure. *See State v. Casteel*, 2001 WI App 188, ¶¶16-17, 247 Wis. 2d 451, 634 N.W.2d 338 (when defendant could have raised new factor warranting sentence modification in previous postconviction motion, defendant is procedurally barred from presenting it later, absent a sufficient reason). Ward provided the circuit court with no reason for his failure to raise this issue in his earlier postconviction motions. Further, Ward was denied drug and alcohol treatment based on the length of his sentence and other factors. He was aware of the lack of treatment early in his incarceration, but failed to raise the issue in his earlier postconviction motions. The circuit court correctly held that Ward was barred from raising these issues.

By the Court.—Order affirmed.

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

