

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 21, 2007**

A. John Voelker  
Acting 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. 2005AP766**

**Cir. Ct. No. 2000CF3922**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**MICHAEL C. ALEXANDER,**

**DEFENDANT-APPELLANT.**

---

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

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Michael C. Alexander appeals *pro se* from an order summarily denying his motion to vacate the judgment of conviction or to withdraw his guilty plea. The issues are whether postconviction counsel was ineffective for failing to challenge trial counsel's effectiveness for failing to

investigate an insanity defense, for allowing Alexander to plead guilty despite his mental condition, and for failing to object to the prosecutor's alleged breach of the plea bargain. We conclude that Alexander's fourth postconviction motion is procedurally barred by WIS. STAT. § 974.06(4) (2003-04)<sup>1</sup> and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Therefore, we affirm.

¶2 Alexander pled guilty to an armed robbery for which the trial court imposed a twenty-year sentence comprised of two ten-year periods of confinement and extended supervision. Alexander instructed his appointed counsel not to appeal.

¶3 Within ninety days of sentencing, Alexander moved *pro se* for sentence modification for a variety of reasons including his osteoarthritis. The trial court denied the motion (“*Alexander I*”).

¶4 Approximately eighteen months later, Alexander again moved *pro se* for sentence modification, this time principally because of his bipolar mood disorder.<sup>2</sup> The trial court summarily denied the second motion because Alexander's allegations were conclusory and did not constitute new factors (“*Alexander II*”).

¶5 Nine months after he filed his second sentence modification motion, he filed a third, alleging that new medications reduced the possibility that he

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2003-04 version.

<sup>2</sup> Alexander also alleged that changes in the law resulting from Truth-in-Sentencing II (effective February 1, 2003) were new factors. He filed this motion on February 3, 2003.

would re-offend. The trial court denied the motion. Alexander appealed from that denial, and we affirmed the trial court's order, explaining specifically why Alexander's reason for failing to previously raise his mental health issues was not sufficient to overcome *Escalona's* procedural bar. See *State v. Alexander*, No. 2003AP3325-CR, unpublished slip op. at 5-6 (WI App Sept. 13, 2004) ("*Alexander III*").

¶6 In his current postconviction motion (Alexander's fourth), he moved *pro se* to vacate his judgment of conviction for the claimed ineffectiveness of counsel for failing to investigate an insanity defense, for the invalidity of his guilty plea caused by his mental condition, and for the prosecutor's alleged breach of the plea bargain. The trial court summarily denied the motion as procedurally barred by *Escalona*, concluding that Alexander "previously raised issues pertaining to his mental health, and there is no reason he could not have raised the issues in his present motion at that time" ("*Alexander IV*"). This appeal is from that order.

¶7 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 those issues. See *Escalona*, 185 Wis. 2d at 185. In his current motion, Alexander alleges no reason for failing to (adequately) raise these issues in his previous motions.<sup>3</sup> Although ignorance of the "sufficient reason" required by WIS. STAT. § 974.06(4) and *Escalona* does not remove the procedural bar, we specifically addressed the

---

<sup>3</sup> In his appellate brief, he alleges that his mental condition was the reason he did not (adequately) raise these issues previously. It is too late, however, to allege the reasons on appeal; they must be alleged in the postconviction motion. See WIS. STAT. § 974.06(4).

necessity of alleging a “sufficient reason” in *Alexander III*, No. 2003AP3325-CR, unpublished slip op. at 4-6. Therefore, Alexander was presumably aware of the “sufficient reason” requisite of *Escalona*, although his ignorance of the law would not excuse his noncompliance. Alexander’s failure to comply with *Escalona*’s procedural requisite bars his fourth *pro se* postconviction motion.

*By the Court.*—Order affirmed.

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

