COURT OF APPEALS
DECISION
DATED AND FILED

March 27, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2006AP1586 **Cir. Ct. No. 2000CF1696**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LOREN CRAIG ALLIET,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: WILLIAM SOSNAY, Judge. *Affirmed*.

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

¶1 PER CURIAM. Loren Craig Alliet appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2005-06)[1] motion. Alliet claims that his plea

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

was involuntary because his trial counsel misinformed him regarding the DNA requirements of WIS. STAT. § 973.047. Because Alliet's claim is procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), we affirm.

BACKGROUND

¶2 On October 30, 1999, Alliet pled guilty to one count of possession with intent to deliver a controlled substance (marijuana). Pursuant to the plea agreement, the State dismissed three additional drug-related counts and recommended a six-month sentence. The trial court accepted the plea and stated: "I guess we don't have a DNA order since it is a 1999 case." Everyone involved believed that Alliet would not be required to provide a DNA sample because he committed this crime in 1999 and, as a result, newly enacted WIS. STAT. § 973.047(1f) (1999-2000) would not apply to Alliet.

¶3 WISCONSIN STAT. § 973.047(1f) required courts to order all convicted felons to "provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis." Alliet failed to appear for the scheduled sentencing hearing on February 8, 2001, and a warrant was issued for his arrest. On April 4, 2001, Alliet committed an armed robbery. He was tried, convicted and sentenced to eight years' initial confinement and eleven years' extended supervision for the armed robbery, before he was sentenced on the 1999 drug conviction. On September 19, 2002, Alliet was eventually sentenced to five years in prison, concurrent to the sentence he was then serving for armed robbery. At the sentencing hearing, the trial court ordered Alliet to submit a DNA sample. This was ordered because § 973.047 applied to all felonies *sentenced* after December 31, 1999. 1999 Wis. Act 9, § 9358(5x).

¶4 After sentencing, Alliet filed a postconviction motion seeking to withdraw his guilty plea. He claimed that his trial counsel provided ineffective assistance by telling him that he would not be obligated to submit a DNA sample because this crime was committed in 1999. The trial court denied his motion and he filed a direct appeal to this court. We held that his trial counsel did not provide ineffective assistance. *See* ***State v. Alliet***, No. 03-3462, unpublished slip op. (WI App Nov. 9, 2004). Alliet then filed a petition for writ of *habeas corpus* in the federal court challenging this court's decision. The federal court denied the petition, ruling that Alliet failed to prove he was prejudiced by the misinformation.

¶5 On May 1, 2006, Alliet filed a *pro se* postconviction motion seeking to withdraw his guilty plea, claiming that it was not knowingly, intelligently and voluntarily entered. The basis for this claim is that he was misinformed by trial counsel that he would not be obligated to submit a DNA sample. The trial court denied the motion and Alliet's subsequent motions seeking reconsideration. Alliet now appeals.

DISCUSSION

¶6 Alliet seeks plea withdrawal on the grounds that he was provided with erroneous information—namely, that he would not be obligated to provide a DNA sample because his crime was committed in 1999. As noted above, WIS. STAT. § 973.047 did not define application to the date the crime was committed, but rather the date on which a defendant was sentenced. We reject Alliet's request for plea withdrawal as his claim is procedurally barred.

¶7 Although Alliet attempts to rephrase the issue in this appeal, it is the *same* issue we rejected in his direct appeal and the *same* issue that the federal

court rejected in his petition for writ of *habeas corpus*. Defendants are not permitted to pursue an endless succession of postconviction remedies:

> 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 were raised previously, or 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.*** "[D]ue process for a convicted defendant permits him or her a single appeal of that conviction and a single opportunity to raise claims of error …." ***State ex rel. Macemon v. Christie***, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998).

¶8 Here, Alliet suggests that the "sufficient reason" was postconviction counsel's decision to challenge the DNA issue by arguing that trial counsel provided ineffective assistance, rather than asserting a direct challenge to the "knowing and voluntary nature of his plea." Alliet presents a distinction that does not make any difference. The issue is the same—whether the belief that Alliet would not be required to submit a DNA sample caused him to enter a faulty plea. The answer to that question is "no" for several reasons.

¶9 The record reflects that Alliet was given an opportunity to withdraw his plea *before* he was sentenced after it was learned that all parties were mistaken about the DNA sample application. Alliet chose to move forward to sentencing. In addition, Alliet, at the time of sentencing, had already submitted a DNA sample for the DNA data bank required for an earlier conviction and sentencing in the

armed robbery case. Finally, as noted by the federal court, Alliet's claim that he would not have pled guilty had he been given accurate information as to a DNA sample, was "patently incredible." If Alliet had gone to trial on the drug charge, he would have been facing three additional counts and overwhelming evidence of his guilt. He received a very favorable plea agreement and having to submit a DNA sample would not have altered the outcome in that case, particularly in light of the bargain he was getting for pleading guilty.

¶10 Based on the foregoing, we conclude that the trial court did not err in summarily denying Alliet's postconviction motion. Alliet has previously litigated and lost the issue he attempts to raise again in this appeal. He has failed to provide this court with any sufficient reason to re-litigate the same claim. Thus, the procedural bar of ***Escalona-Naranjo*** applies.

By the Court.—Order affirmed.

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