

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 2007

David R. Schanker
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. 2005AP2206

Cir. Ct. No. 1996CF962633B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SHAWNDON JOHNSON,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Shawndon Johnson appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04)¹ postconviction motion. Johnson

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

claims the trial court erred in denying his motion. Because Johnson's claim is procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), we affirm.

BACKGROUND

¶2 In May 1996, Johnson was charged with one count of armed robbery as party to a crime and as a habitual criminal. Johnson's co-defendant, Perry Cornell Love, was also charged with armed robbery as party to a crime. At the arraignment in June 1996, the prosecutor indicated that he was going to file an information changing Johnson's charge from armed robbery to receiving stolen property. The information, however, charged Johnson with armed robbery, but charged Love with receiving stolen property.

¶3 Johnson was tried by a jury and convicted of armed robbery. He was sentenced to twenty-five years in prison. At no time during the trial proceedings did Johnson complain about the charge in the information. After judgment was entered, Johnson's counsel filed a no-merit report, identifying three potential appellate issues: sufficiency of the evidence, sentencing, and ineffective assistance of trial counsel. Johnson filed a response to the no-merit report asserting that there was insufficient evidence to prove he was guilty and that the identification procedures were impermissibly suggestive. After conducting an independent review, we concluded that there were no meritorious issues for appeal.

¶4 In August 2005, Johnson filed a WIS. STAT. § 974.06 motion challenging his armed robbery conviction. The issue raised was that the circuit court lacked jurisdiction to convict him of armed robbery based on the prosecutor's statements at the arraignment about charging Johnson with receiving

stolen property instead of armed robbery. The trial court denied the motion, ruling:

The defendant seeks to vacate his conviction based upon a claim that the armed robbery charge was reduced to receiving stolen property at his arraignment on June 11, 1996. He also raises other jurisdictional claims. State v. Escalona-Naranjo, 185 Wis. 2d 168, 179 (1994), precludes the defendant from pursuing the current motion. Section 974.06(4), Stats., requires a defendant to raise all grounds for postconviction relief in his original motion or appeal. Failure to do so precludes a defendant from raising additional issues, including claims of constitutional or jurisdictional violations, in a subsequent motion or appeal where those issues could have been raised previously.... The defendant's failure to raise his current claims in response to the no merit report is deemed as a waiver of those issues.

¶5 The trial court also denied Johnson's motion by rejecting the merits of his claim. The trial court concluded that the prosecutor's statement at arraignment was actually meant to refer to the co-defendant, Love, which would be consistent with what eventually happened. The trial court then entered an order denying Johnson's motion. Johnson now appeals.

DISCUSSION

¶6 Johnson's brief is difficult to decipher. He appears to argue that the trial court should have granted his motion on the basis that the circuit court lacked jurisdiction over him due to the prosecutor's statements at the arraignment. We affirm the trial court's decision denying Johnson's motion on the grounds that his claim is procedurally barred.

¶7 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). Johnson presents no reason at all, let alone a *sufficient* reason, for failing to raise this claim during his no-merit appeal.

¶8 Moreover, 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 State v. Tillman*, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574 (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.).

¶9 Here, the record demonstrates that the no-merit process procedures were followed and the record demonstrates a sufficient degree of confidence in the result. This court reviewed the issues raised in the no-merit report, in Johnson’s response, and any other potentially meritorious issues. We concluded that there were no meritorious issues. Accordingly, under these circumstances, Johnson has

failed to demonstrate that any sufficient reason exists for failing to raise the issues he raises now during his earlier appeal.

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

By the Court.—Order affirmed.

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

