

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 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. 2006AP1049

Cir. Ct. No. 2006CV2519

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN EX REL. L. C. CLAY, JR.,

PETITIONER-APPELLANT,

V.

WILLIAM POLLARD, WARDEN, GREEN BAY CORRECTIONAL INSTITUTION,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JOSEPH M. DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. L.C. Clay, Jr., *pro se*, appeals from an order dismissing a petition for a writ of *habeas corpus*. The circuit court held that the petition was procedurally barred. We affirm.

¶2 In 1993, Clay was convicted of nine counts of armed robbery, one count of attempted armed robbery and five counts of first-degree sexual assault. Clay appealed, and this court affirmed. *State v. Clay*, No. 1994AP1193-CR, unpublished slip op. (Wis. Ct. App. July 25, 1995). The supreme court denied Clay’s petition for review.

¶3 On January 27, 2004, Clay filed a motion for postconviction relief under WIS. STAT. § 974.06 (2003-04). In that motion, Clay argued that he was not given his *Miranda*¹ rights at the time of his arrest. The circuit court denied Clay’s motion. He did not appeal.

¶4 On February 9, 2006, Clay filed the petition for a writ of *habeas corpus* that underlies this appeal. In his petition, Clay argued that his appellate attorney was ineffective for not raising an issue relating to his competency at trial and for not raising a multiplicity argument. The circuit court dismissed Clay’s petition as procedurally barred.

¶5 A defendant cannot raise an argument in a second postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181–182, 517 N.W.2d 157, 162 (1994). A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Id.*, 185 Wis. 2d at 185, 517 N.W.2d at 163-164; *see also* WIS. STAT. § 974.06(4) (2005-06) (“Any ground finally adjudicated or not so raised, or knowingly,

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

voluntarily and intelligently waived ... in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion,” absent sufficient reason.).

¶6 The procedural bar is driven by the “need [for] finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 163. Its application is not limited to postconviction motions filed under WIS. STAT. § 974.06. A postconviction petition for *habeas corpus* will not be granted when the petitioner asserts a claim that he could have raised during a prior appeal, but failed to do so, and the petitioner offers no valid reason to excuse such failure. *State v. Pozo*, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 803, 654 N.W.2d 12, 15.

¶7 Applying those principles here, we concur with the circuit court’s dismissal of Clay’s petition. Clay does not explain why he could not have raised the competency or multiplicity issues in his initial WIS. STAT. § 974.06 postconviction motion. In his petition, Clay cited to *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 556 N.W.2d 136 (Ct. App. 1996), but his reliance on *Rothering* is misplaced. Under *Rothering*, ineffective assistance of postconviction counsel may be considered “sufficient reason” for failing to raise an issue previously. *Id.*, 205 Wis. 2d at 681–682, 556 N.W.2d at 139. Although *Rothering* might have been invoked by Clay when he filed his initial § 974.06 motion to explain why issues were not raised on direct appeal, its holding does not extend to save Clay’s second collateral attack on his conviction. Therefore, the circuit court properly ruled that Clay’s latest challenge to his conviction was procedurally barred.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT.
RULE 809.23(1)(b)5 (2005-06).

