

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 8, 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. 2006AP1909

Cir. Ct. No. 2001CF6321

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANTONIO M. PERKINS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Antonio M. Perkins appeals *pro se* from orders denying his postconviction motions. Perkins's brief is mostly indecipherable. He appears to argue that he should be allowed to withdraw his plea because the trial court did not comply with the proper requirements during his plea hearing.

Because his claim is procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and because absent the plea hearing transcript, we must presume that the transcript supports the conviction, we affirm.

BACKGROUND

¶2 In November 2001, Perkins was charged with one count of second-degree recklessly endangering safety and one count of false imprisonment. The charges were filed after an incident at a closed movie theatre. Perkins had approached the theatre, wearing a woman's dress and knocked on the door. The two male employees inside went to see what Perkins wanted and he told them he had left his wallet in one of the theatres. They indicated they could not help him. A short time later, one of the employees was taking the garbage out to the dumpster. Once outside, Perkins held a handgun to the employee's head and told the employee to get on the ground. Perkins then took the employee at gunpoint into the theatre, but was then confronted by the second theater employee who began fighting with Perkins.

¶3 The three men continued to struggle for the gun. During the struggle, Perkins's knife fell to the ground and the second theatre employee grabbed it and stabbed Perkins twice. Perkins then fired the gun and the first employee was struck in the hand. The employees got control of the gun and Perkins fled. He was eventually apprehended and charged as noted above.

¶4 Perkins entered a plea of not guilty by reason of mental disease or defect. A psychological evaluation was ordered and completed. Dr. Kenneth Smail concluded that there was no evidence to support the special plea and that Perkins was able to appreciate the wrongfulness of his conduct and conform his

conduct to the requirements of the law. Based on the foregoing, Perkins changed his plea to no contest.

¶5 The trial court accepted the no contest plea and ordered a presentence investigation report be prepared prior to sentencing. At the sentencing hearing in December 2002, Perkins was sentenced to five years on the reckless endangerment count, consisting of two years' initial confinement, followed by three years' extended supervision and to four years on the false imprisonment count, consisting of two years' initial confinement, followed by two years' extended supervision. The false imprisonment sentence was consecutive to the reckless endangerment, but both sentences were stayed and Perkins was placed on probation for seven years.

¶6 In December 2005, Perkins' probation was revoked for violating the conditions of probation. Perkins then began filing motions. In February 2006, he filed a motion seeking the production of transcripts. The trial court denied the motion on the basis that Perkins's appellate rights had expired and as a result, transcript requests (at public expense) would not be granted without demonstrating an arguably meritorious claim.

¶7 In March 2006, Perkins filed a petition for review, alleging that the computation of his sentence was incorrect. This motion was denied on the basis that such requests need to be made with the Department of Corrections, not the court.

¶8 On April 13, 2006, Perkins filed a motion seeking modification of his sentence. On April 17, 2006, Perkins filed a motion challenging the structure of the sentence. Both motions were denied by the trial court on May 2, 2006. On May 17, 2006, Perkins filed another motion seeking "reconsideration and review,"

alleging that the trial court should have considered his psychological issues, which would have caused the court to admit Perkins to a mental health facility rather than to accept his plea. The trial court denied the motion, ruling that it was procedurally barred as a successive postconviction motion. Perkins now appeals.

DISCUSSION

¶9 On appeal, Perkins requests that we allow him to withdraw his plea. We reject his request.

¶10 First, his claim is procedurally barred as a successive postconviction motion. 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). Perkins presents no reason at all, let alone a *sufficient* reason, for failing to raise this claim during his multiple motions filed in the circuit court following his conviction.

¶11 Second, even if we were to address the merits of his claim, and consider whether the trial court failed to follow the requisites during the plea hearing, we are unable to do so as Perkins has not provided this court with a transcript from that hearing. “It is the appellant’s burden to ensure that the record is sufficient to address the issues raised on appeal.” *Lee v. LIRC*, 202 Wis. 2d 558, 560 n.1, 550 N.W.2d 449 (Ct. App. 1996). Thus, the burden of providing this court with the record portions necessary to review any claims rests with Perkins. He has failed to provide this court with the plea hearing transcript. Accordingly, we assume that the plea transcript supports the trial court’s ruling. *See State v. Holmgren*, 229 Wis. 2d 358, 362 n.2, 599 N.W.2d 876 (Ct. App. 1999).

By the Court.—Orders affirmed.

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

