

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 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. 2005AP2037

Cir. Ct. No. 1992CF924027

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAMONT ELLIOT MOORE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
KAREN E. CHRISTENSON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lamont E. Moore, *pro se*, appeals from an order denying a motion for postconviction relief filed under WIS. STAT. § 974.06 (2005-

06).¹ The circuit court denied the motion on the ground that Moore's claims were barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree with the circuit court, and accordingly, we affirm.

BACKGROUND

¶2 In 1993, a jury found Moore guilty of first-degree intentional homicide, party to a crime. Moore appealed, and his appointed attorney filed a no-merit report. See WIS. STAT. RULE 809.32. In the no-merit report, counsel discussed seven issues: (1) whether the circuit court misused its discretion when it denied a motion for a continuance; (2) whether Moore's statements to the police should have been suppressed; (3) whether the circuit court misused its discretion when it permitted the State to file an amended Information that added a party to a crime allegation; (4) whether the State improperly struck an African-American from the jury; (5) whether the circuit court misused its discretion when it instructed the jury on the lesser included offense of first-degree reckless homicide; (6) whether sufficient evidence supported the verdict; and (7) whether the circuit court misused its sentencing discretion. *State v. Moore*, No. 93-2648-CRNM, unpublished slip op. at 2-3 (Wis. Ct. App. Aug. 30, 1994). Moore filed a response in which he challenged the effectiveness of trial counsel in four respects: (1) permitting the jury to see him in shackles; (2) failing to move for a mistrial due to the admission of evidence that Moore was involved in gang-related activities; (3) making inarticulate objections; and (4) not presenting a witness that Moore

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

asked him to. *Id.* at 3-5. Additionally, Moore argued that evidence of his involvement with stolen cars should not have been considered at sentencing. *Id.* at 5-6. After an independent review of the record and consideration of counsel's report and Moore's response, this court affirmed.

¶3 Moore filed his first WIS. STAT. § 974.06 motion in 1999. In that motion, Moore challenged the effectiveness of trial counsel in two additional respects and argued that appellate counsel did not properly scrutinize the arrest and interrogation methods used by police. The circuit court denied Moore's motion, in part because Moore had not raised these arguments in his response to the no-merit report. Moore appealed, and this court affirmed. *State v. Moore*, No. 99-1706, unpublished slip op. (Wis. Ct. App. July 7, 2000). In our order, we noted that Moore had raised several allegations of trial counsel ineffectiveness in his response to the no-merit report, but these latest allegations were not included in his response. Citing *Escalona-Naranjo*, we held that "Moore's failure to raise these arguments on direct appeal preclude[d] him from litigating them now."² *State v. Moore*, No. 99-1706, unpublished slip op. at 3.

¶4 Moore filed his second WIS. STAT. § 974.06 postconviction motion in 2001. In that motion, Moore claimed he was denied a fair trial due to prosecutorial misconduct. He also renewed his contention that trial counsel was ineffective, and he added an assertion that appellate counsel was ineffective. The

² Our affirmance is consistent with the later holding of *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574, where we applied the procedural bar of *Escalona-Naranjo* when the defendant's prior appeal was a no-merit appeal under WIS. STAT. RULE 809.32.

circuit court concluded that the motion was procedurally barred by *Escalona-Naranjo*. Moore appealed, and this court again affirmed. *State v. Moore*, No. 2001AP1596-CR, unpublished slip op. (WI App June 4, 2002). We wrote:

The record is undisputed that Moore filed both a direct appeal and a postconviction motion prior to the one underlying this appeal. Moore's second motion does not explain why the constitutional issues identified in it, to the extent they differ from the constitutional issues raised in his appeal and first postconviction motion, could not have been raised in his direct appeal. Because Moore failed to state a sufficient reason as to why these issues were not previously raised, we hold that the circuit court properly denied his motion with respect to any new issues raised in it. We further hold that, to the extent these issues were previously raised, the circuit court's order denying the instant motion was correct, inasmuch as such grounds were previously raised, adjudicated, or waived.

Id., unpublished slip op. at 3.

¶5 On July 5, 2005, Moore filed his third WIS. STAT. § 974.06 postconviction motion, the motion that underlies this appeal. The circuit court denied the motion as procedurally barred. Moore appeals.

DISCUSSION

¶6 A defendant cannot raise an argument in a subsequent 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. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. A defendant must "raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion." *Id.* at 185; *see also* WIS. STAT. § 974.06(4) ("Any ground finally adjudicated or not so raised, or knowingly, 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.).

[A] criminal defendant [is] required to consolidate all postconviction claims into his or her original, supplemental, or amended motion. If a criminal defendant fails to raise a constitutional issue that could have been raised on direct appeal or in a prior § 974.06 motion, the constitutional issue may not become the basis for a subsequent § 974.06 motion unless the court ascertains that a sufficient reason exists for the failure either to allege or to adequately raise the issue in the appeal or previous § 974.06 motion.

State v. Lo, 2003 WI 107, ¶31, 264 Wis. 2d 1, 665 N.W.2d 756 (citations omitted).

¶7 Moore offers no sufficient reason, and we can discern none from the record, why the issues he now raises in his third postconviction motion were not raised previously, either on direct appeal or in his two previous postconviction motions.³ Moore’s history of postconviction litigation is a textbook example of why the procedural bar exists. As the supreme court stated in *Escalona-Naranjo*, 185 Wis. 2d at 185, “[w]e need finality in our litigation.”

³ In his reply brief, Moore asserts that he did not have a copy of the trial transcripts during the no-merit appeal process. As proof for that assertion, Moore appends a copy of a June 19, 1995 letter from his appellate counsel by which she provided Moore with “the judgment roll, [the] transcripts and the documents ... received from the court file.” That letter establishes that Moore had the transcripts before his initial WIS. STAT. § 974.06 postconviction motion, filed in 1999. Moore does not explain why these latest issues could not have been raised at that time. Although ineffective assistance of postconviction counsel may be “sufficient reason” under *Escalona-Naranjo* for failing to raise an issue previously, *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 681-82, 556 N.W.2d 136 (Ct. App. 1996), a defendant cannot bring multiple postconviction motions.

By the Court.—Order affirmed.

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

