

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 22, 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 Nos. 2006AP1989
2006AP1990
STATE OF WISCONSIN**

**Cir. Ct. Nos. 1998CF3584
1998CF3614
1998CF4039**

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHERMAN B. RONES,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Sherman B. Rones, *pro se*, appeals from a May 19, 2006 order, denying his postconviction motion to reconsider the trial court's May

4, 2006 earlier denial of a WIS. STAT. § 974.06 (2005-06)¹ postconviction order.² Ronés claims the trial court erred in ruling that his postconviction motion was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and because he had a sufficient reason for failing to raise his issues in his previous postconviction motion—namely, that the case file his appellate attorney had turned over to him at the end of his direct appeal was missing documents. Because Ronés fails to demonstrate a sufficient reason to overcome the *Escalona-Naranjo* procedural bar, we affirm.

BACKGROUND

¶2 In May through June 1998, Ronés committed multiple armed robberies and sexual assaults. He ultimately entered guilty pleas pursuant to a plea agreement. He was sentenced to forty years on one count of first-degree sexual assault, forty-five years each on two other counts of first-degree sexual assault, and forty years on the armed robbery, all consecutive to each other. Following his conviction, Ronés filed a postconviction motion seeking to withdraw his guilty pleas, which was denied. Ronés filed a direct appeal to this court, requesting plea withdrawal on the grounds that his trial counsel provided ineffective assistance. We affirmed. *See State v. Ronés*, Nos. 00-2396-CR & 00-2397-CR, unpublished

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

² By order of this court dated September 11, 2006, we asked both parties to address whether this court had jurisdiction to hear this appeal from the order denying Ronés's motion for reconsideration. We concluded that we did not have jurisdiction to review the May 4, 2006 order, because Ronés did not timely file an appeal from that order. Both Ronés and the State agree that this court has jurisdiction to hear Ronés's appeal from the order denying his motion to reconsider. Because we agree that Ronés's motion for reconsideration contains a different issue from those in the May 4th order, we hold that this court does have jurisdiction over the instant appeal. *See Silvertown Enter. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988).

slip op. (WI App Sept. 18, 2001). Ronés filed a petition for review with the supreme court, which was denied.

¶3 In October 2002, Ronés filed a *pro se* WIS. STAT. § 974.06 postconviction motion seeking to vacate his pleas or for sentencing relief, which was denied. He appealed the trial court’s denial to this court and we affirmed. *See State v. Ronés*, Nos. 03-0137 & 03-0138, unpublished slip op. (WI App Dec. 4, 2003). He again petitioned the supreme court for review, but the petition was denied.

¶4 On May 1, 2006, Ronés filed another *pro se* WIS. STAT. § 974.06 postconviction motion, raising issues of ineffective assistance of counsel, newly discovered evidence and sentence modification. The trial court denied the motion on May 4, 2006, on the grounds that it was procedurally barred, ruling that “there [was] no reason why the defendant could not have raised claims concerning the ineffective assistance of postconviction counsel in his last [§ 974.06] motion.” Ronés did not appeal this order. Rather, Ronés filed a motion for reconsideration, proffering an explanation for failing to raise these issues in his earlier motion. The trial court denied this motion and Ronés appealed.

DISCUSSION

¶5 In this appeal, Ronés contends that the trial court erred in ruling that his postconviction motion was procedurally barred because he has a “sufficient reason” for failing to raise these issues in a previous appeal. Namely, he contends that he recently discovered that certain items were missing from the record, and thus he was unable to previously raise the claims he presented in his most recent postconviction motion. We reject Ronés’s argument and affirm.

¶6 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).

¶7 Ronex contends he did not discover that his case file was missing several documents until after he had already commenced his appeal from his previous postconviction motion. Thus, he argues, it was not possible for him to raise issues relating to the missing documents until he had made the discovery. Although it is not entirely clear, the “missing documents” include Ronex’s lease from his apartment, affidavits submitted in support of the search warrant for his apartment and the State’s witness list. He asserts that this newly discovered information constitutes a sufficient reason to preclude application of the *Escalona-Naranjo* procedural bar.

¶8 Although Ronex is correct that newly discovered information may constitute a “sufficient reason,” we are not convinced that Ronex’s “discovery” of the missing information qualifies as “newly discovered.” In order to satisfy his

burden that evidence is in fact “newly discovered,” a defendant must prove that: “(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *State v. McCallum*, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997).

¶9 We agree with the State that Rones cannot satisfy this test because he was negligent in failing to discover the evidence. Rones was convicted in 1998. He certainly could have requested a list of the docket entries at any time prior to filing his first *pro se* postconviction motion. If he had, he would have discovered *prior* to filing his motion, that the documents listed were not in his case file. Moreover, this evidence was not “newly discovered” as Rones certainly was aware of the lease for his own apartment. Likewise, the search warrant affidavits were in existence and Rones could have requested copies of them from the State if he did not already have them.

¶10 Based on the foregoing, we conclude that Rones has failed to establish that he could not have discovered the missing documents earlier, prior to the filing of his prior postconviction motion. He has failed to establish that a “sufficient reason” exists for not raising the issues in this appeal during his earlier postconviction proceedings. Accordingly, we agree with the trial court that his claims in the instant appeal are procedurally barred.

By the Court.—Order affirmed.

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

