

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 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. 2005AP3145

Cir. Ct. No. 1994CF944174

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JIMMY BALDWIN,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
DAVID A. HANSHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jimmy Baldwin appeals from orders denying his motions for postconviction relief and reconsideration. The issues are whether Baldwin must allege a sufficient reason for failing on direct appeal or in his previous postconviction motion to request access to his presentence investigation

report and to allege postconviction counsel's correlative ineffectiveness. We conclude that these issues are procedurally barred for Baldwin's failure to allege any reason for failing to raise them previously. Therefore, we affirm.

¶2 A jury found Baldwin guilty of first-degree reckless homicide while armed, and four counts of first-degree recklessly endangering safety while armed, as a party to each crime. The trial court imposed a seventy-three-year sentence. Baldwin appealed. This court affirmed the judgment of conviction. See *State v. Baldwin*, No. 95-3501-CR, unpublished slip op. at 8 (Wis. Ct. App. Nov. 26, 1996) ("*Baldwin I*").

¶3 In 1999, Baldwin moved for postconviction relief pursuant to WIS. STAT. § 974.06 (1999-2000), raising two sentencing challenges and two instances of ineffective assistance of appellate counsel. The trial court denied the motion. This court affirmed that denial. See *State v. Baldwin*, No. 2000AP2069, unpublished slip op. at 7 (WI App Nov. 27, 2001) ("*Baldwin II*").

¶4 In 2005, Baldwin moved *pro se* for postconviction relief, seeking access to his presentence investigation report. The trial court denied the motion as procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994). Baldwin moved for reconsideration, alleging that he "mention[ed] the issue" to appointed counsel who failed to pursue it, and explained that he was only seventeen years old when he committed these crimes and was "totally ignorant [of] the law, relying on the expertise of the [c]ourt[-] appointed attorneys to perform their dut[ie]s." The trial court also denied reconsideration. Baldwin appeals from both orders.

¶5 To avoid *Escalona's* procedural bar, Baldwin must allege a sufficient reason for failing to raise all postconviction challenges on direct appeal

or in his original, supplemental or amended postconviction motion. *See id.* at 185-86. On reconsideration, Baldwin belatedly alleges that he was aware of this issue, and “mention[ed]” it to appointed counsel. Prior to reconsideration, Baldwin failed to allege any reason for failing to previously seek access to his presentence investigation report.¹ Consequently, the issue is now procedurally barred. *See id.* For these same reasons, the correlative ineffective assistance claim is procedurally barred.² Likewise, we also affirm the trial court’s denial of reconsideration.³

By the Court.—Orders affirmed.

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

¹ Insofar as Baldwin claims that he alleged a sufficient reason on reconsideration or on appeal, that is not timely. His reason must be alleged in the postconviction motion to allow the trial court to initially evaluate the sufficiency of his reason. *See* WIS. STAT. § 974.06(4) (2005-06). Although ignorance of the procedural bar does not excuse its applicability, Baldwin should have been aware of it since it was addressed by the trial court, and this court in *Baldwin II*. *See State v. Baldwin*, No. 2000AP2069, unpublished slip op. at 7 (WI App Nov. 27, 2001) (“*Baldwin II*”).

² Insofar as Baldwin expected counsel to pursue this issue, he knew by the trial court’s decision on August 30, 1999, and certainly by our November 27, 2001 decision at the very latest, that counsel (who represented him at postconviction proceedings but not on appeal) did not pursue that issue. The current postconviction motion was not filed until October 27, 2005. An unexplained delay of between four to six years to raise this issue is unreasonable.

³ Although Baldwin does not cite *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) in his correspondence seeking reconsideration, insofar as he mentions his counsel’s failure to pursue the issue and his status as a teenager unschooled in the law as reasons for his failure to raise this issue previously, his reason must be alleged in the postconviction motion itself, not on reconsideration thereafter. *See* WIS. STAT. § 974.06(4) (2005-06).

