

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 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. 2006AP2709

STATE OF WISCONSIN

Cir. Ct. No. 1995CF954164

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHOU SENG MOUA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
WILLIAM SOSNAY, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Chou Seng Moua, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 (2005-06)¹ postconviction motion. Because Moua’s claims were either previously litigated or are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), we affirm.

¶2 Moua pled guilty to the first-degree reckless homicide of his wife. On April 1, 1996, the circuit court sentenced Moua to forty years’ imprisonment. Moua filed a notice of intent to pursue postconviction relief, and a direct appeal under WIS. STAT. RULE 809.30(2) (1997-98) ensued. Moua moved to withdraw his guilty plea as not knowingly, voluntarily, and intelligently entered. The circuit court denied Moua’s motion. Moua appealed, and this court affirmed the judgment of conviction and postconviction order. *State v. Moua*, No. 97-3240-CR, unpublished slip op. (Wis. Ct. App. Feb. 16, 1999).

¶3 On October 11, 2006, Moua filed a postconviction motion under WIS. STAT. § 974.06. In the motion, Moua raised several challenges to the effectiveness of his trial counsel. The circuit court denied the postconviction motion, stating that most of Moua’s claims were “wholly conclusory” and did not “state a viable claim for relief.” The circuit court also noted that some of Moua’s claims were addressed on direct appeal and could not be relitigated. Finally, the circuit court held that the procedural bar of *Escalona-Naranjo* precluded relief. Moua appeals.²

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

² Many of the arguments made in Moua’s postconviction motion are not raised in his appellate brief, and we do not address them.

¶4 The only argument made both in his postconviction motion and on appeal concern the Hmong interpreter provided to Moua during the plea colloquy. In his postconviction motion, Moua contended that trial counsel was ineffective because he “failed to have the interpreter’s [sic] take an oath or affirmation.” In his appellate brief, Moua raises a broader challenge to the quality of the Hmong interpretation provided him by the circuit court, asserting that the circuit court failed to comply with the Americans with Disabilities Act, 42 U.S.C. §§ 12101 - 12213 (1994).

¶5 In his direct appeal, Moua argued that his guilty plea was not knowingly, voluntarily or intelligently entered. Moua challenged the qualifications of the interpreter to translate between Hmong and English. Moua also argued that the interpreter was not sworn on the record. *State v. Moua*, No. 97-3240-CR, unpublished slip op. at 3. This court addressed Moua’s arguments as follows.

Contrary to Moua’s assertion, the transcript shows that the translator was sworn as an interpreter during the plea hearing. The docket entries also state that the interpreter was sworn.

Although the trial court did not ascertain on the record what the interpreter’s qualifications were, there is no evidence to suggest that the interpreter did not properly perform his duties. Because Moua has the burden of establishing some deficiency or incompetence on the part of the interpreter, we reject this argument.

Id.

¶6 An issue previously considered on direct appeal cannot be reconsidered in a WIS. STAT. § 974.06 postconviction motion. *State v. Brown*, 96 Wis. 2d 238, 241, 291 N.W.2d 528 (1980). Because Moua has already litigated the issues of whether the interpreter was sworn and whether the interpreter was

qualified, he cannot raise those issues again, “no matter how artfully [he] may rephrase” them. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

¶7 Moreover, to the extent that Moua is raising an argument not previously litigated, the procedural bar of *Escalona-Naranjo* applies.

¶8 “[D]ue process for a convicted defendant permits him or her a single appeal of [a] 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). 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. *Escalona-Naranjo*, 185 Wis. 2d at 181-182. A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Id.*, 185 Wis. 2d 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, 16, 665 N.W.2d 756 (citations omitted).

¶9 Moua offers no sufficient reason, and we can discern none from the record why he could not have raised on direct appeal his most recent arguments relating to the Hmong interpretation. The procedural bar of *Escalona-Naranjo* precludes Moua's motion.

By the Court.—Order affirmed.

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

