**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**October 16, 2007**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2006AP1226** **Cir. Ct. Nos. 2001CF1633**
**2001CF2471**

**STATE OF WISCONSIN** **IN COURT OF APPEALS**
**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LOUIS JOSHUA TAYLOR,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

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

¶1 PER CURIAM. Louis Joshua Taylor appeals from an order denying his petition for a writ of habeas corpus. The issue is whether the alleged ineffective assistance of trial and appellate counsel, alleged prosecutorial misconduct, and the alleged insufficiency of the evidence constitute a "sufficient

reason" to avoid the procedural bar of ***State v. Tillman***, 2005 WI App 71, ¶¶25-27, 281 Wis. 2d 157, 696 N.W.2d 574. We conclude that Taylor's petition is procedurally barred for failing to allege a sufficient reason for not raising any of these issues previously. Therefore, we affirm.

¶2 Taylor was convicted of multiple drug-related offenses and bail jumping. He pled guilty to some of the charges; a jury found him guilty of the others. His appellate counsel pursued a no-merit appeal; Taylor did not respond to counsel's no-merit report. After considering the report and independently reviewing the record, we concluded that further proceedings would lack arguable merit, and we affirmed the judgments of conviction. *See* ***State v. Taylor***, 2002AP2044-CRNM, unpublished slip op. at 1-2 (WI App Feb. 25, 2004) ("***Taylor I***").

¶3 Approximately three months after our ***Taylor I*** decision, Taylor moved *pro se* for postconviction relief, pursuant to WIS. STAT. § 974.06 (2003-04). The trial court denied the motion, explaining that it was "conclusory in all respects," and procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994), "because Taylor could have raised any of these claims in response to counsel's no merit report in the Court of Appeals. He did not do so, and he offers no reason why he did not." ("***Taylor II***"). Taylor did not appeal from that order.

¶4 Approximately sixteen months after ***Taylor II***, Taylor filed a *pro se* petition for a writ of habeas corpus, alleging multiple instances of ineffective

assistance by trial and postconviction counsel. The trial court denied that motion as procedurally barred by ***Escalona***. Taylor appeals from that order.[1]

¶5 In his habeas corpus petition, Taylor claims that his various counsel were ineffective, and complains of prosecutorial misconduct and an "abuse of judicial discretion," in the conduct of the trial. Although he does not directly allege why he did not raise these issues in ***Taylor I*** or ***II***, he claims that the basis for his habeas corpus petition, why his "imprisonment is illegal," is in part because his appellate counsel was ineffective for pursuing a no-merit, rather than an adversary appeal. He explains that he did not respond to the no-merit report in ***Taylor I*** because he was and remains "unskilled in the law," and his multiple transfers among correctional institutions rendered him unable "to marshall the arguments necessary to not be conclusory" in his ***Taylor II*** motion.[2]

¶6 A postconviction movant must raise all grounds for postconviction relief on direct appeal (or in his or her original, supplemental or amended postconviction motion) unless, in a subsequent postconviction motion, he or she alleges a sufficient reason for failing to previously raise those issues. *See* ***Escalona***, 185 Wis. 2d at 185-86. Whether ***Escalona***'s procedural bar applies to a postconviction claim is a question of law entitled to independent review. *See* ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). We

[1] Preliminarily, Taylor contends that this court has no jurisdiction to review the order because it was not decided within sixty days, as required by WIS. STAT. RULE 809.30(2)(i) (2005-06). RULE 809.30(2)(i) does not benefit Taylor. A postconviction motion not decided within sixty days of its filing "is considered to be [automatically] denied."

[2] Affording Taylor the benefit of the doubt, it is arguable that he could not allege appellate counsel's ineffectiveness until after ***Taylor I***; however, he could have alleged that issue in his ***Taylor II*** motion.

extended ***Escalona***'s applicability to postconviction motions following no-merit appeals. *See* ***Tillman***, 281 Wis. 2d 157, ¶27. Before applying ***Tillman***'s procedural bar, however, both the trial and appellate courts "must pay close attention to whether the no merit procedures were in fact followed. In addition, the court must consider whether that procedure, even if followed, carries a sufficient degree of confidence warranting the application of the procedural bar under the particular facts and circumstances of the case." ***Id.***, ¶20 (footnote omitted). "[A] prior no merit appeal may serve as a procedural bar to a subsequent postconviction motion and ensuing appeal which raises the same issues or other issues that could have been previously raised." ***Id.***, ¶27.

¶7 Taylor alleges the ineffective assistance of appellate counsel in pursuing a no-merit appeal, his own unfamiliarity with the law, and his multiple transfers among correctional institutions, as to why his "imprisonment [wa]s illegal." Even if we were to construe these reasons as responding to the "sufficient reason" requisite of ***Tillman***, they are insufficient to overcome its procedural bar. *See* ***Tillman***, 281 Wis. 2d 157, ¶¶25-27.

¶8 Many defendant-appellants in a no-merit appeal are not knowledgeable in the law. They are eligible for appointed counsel, and frequently characterize counsel's pursuit of a no-merit appeal as ineffective assistance. Many defendant-appellants are also transferred among correctional institutions. These are precisely the reasons that the defendant-appellant needs only identify his or her criticisms in a no-merit response, rather than being obliged to comply with the formal briefing rules governing an adversary appeal. *See* ***Anders v. California***, 386 U.S. 738, 744-45 (1967); ***Tillman***, 281 Wis. 2d 157, ¶¶16-18. These are precisely the reasons the appellate court affords a more comprehensive review to a no-merit appeal, where we are obliged to independently review the record to

search for every arguably meritorious issue, whereas in an adversary appeal, we only decide the issues appellant properly raises and adequately briefs. *See* ***Tillman***, 281 Wis. 2d 157, ¶¶15-18.

¶9 These reasons, insofar as they are even properly alleged, do not distinguish Taylor from many other defendant-appellants in no-merit appeals, or in postconviction (or in this case habeas corpus) proceedings. Consequently, they are insufficient to overcome ***Tillman***'s procedural bar of Taylor's habeas corpus petition.

*By the Court.*—Order affirmed.

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