

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 27, 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. 2007AP343

Cir. Ct. No. 1991CF913671

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GLENN TERRELL TURNER,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Glenn Turner appeals from the order denying his motion for postconviction relief. He argues that his postconviction counsel was ineffective for failing to argue that his trial counsel was ineffective. Because we conclude that these arguments have previously been decided or are barred by *State*

v. Escalona-Naranjo, 185 Wis.2d 168, 185-86, 517 N.W.2d 157 (1994), we affirm.

¶2 Turner pled guilty to one count of first-degree intentional homicide in 1992. The court sentenced him to life in prison with a parole eligibility date of 2017. This court reinstated Turner’s appellate rights in 2003, and postconviction counsel filed a motion seeking plea withdrawal or sentence modification. The circuit court denied the motion, we affirmed, and the supreme court denied his petition for review.

¶3 In 2006, Turner, acting *pro se*, filed another postconviction motion. He alleged that his postconviction counsel was ineffective for failing to argue that: (1) trial counsel was ineffective for failing to investigate, inform the defendant of, and pursue an imperfect self-defense claim; (2) trial counsel failed to obtain test results on gunpowder and fingerprints; and (3) the defendant never actually entered a guilty plea, and consequently the court lost jurisdiction to sentence him. The circuit court denied the motion. The court found that Turner had previously raised the last two issues, and that this court had rejected them. The circuit court rejected them for the same reasons. The circuit court also rejected the first argument finding that Turner’s claim was “completely self-serving and not supported by the facts of record,” and that the motion was conclusory. Turner appeals.

¶4 Turner argues to this court that the circuit court erred when it denied his motion, and that the court should have held a hearing on his claims. He again argues that his trial counsel was ineffective because he should have known that Turner was not guilty of first-degree intentional homicide and should have informed Turner of the imperfect self-defense claim; as a result of trial counsel’s

ineffectiveness, Turner pled guilty to a crime he did not commit; and his plea was invalid because Turner never actually pled guilty.

¶5 The law of the case doctrine provides that when an appellate court decides an issue, that decision establishes “the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.” *State v. Moeck*, 2005 WI 57, ¶18, 280 Wis. 2d 277, 695 N.W.2d 783. This is not an absolute rule, and courts may disregard it when there are “cogent, substantial, and proper reasons” to do so. *Id.*, ¶25.

¶6 In *Escalona-Naranjo*, 185 Wis. 2d at 185, the supreme court stated:

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.

A defendant must raise all grounds of relief in his original supplemental or amended motion for postconviction relief. *Id.* at 181. If a defendant’s grounds for relief have been finally adjudicated, waived, or not raised in a prior postconviction motion, they may not become the basis for a new postconviction motion, unless there is a sufficient reason for the defendant’s failure to allege or adequately raise the issue in the original motion. *Id.* at 181-82. Further, in *State v. Tillman*, this court held that “when a defendant’s postconviction issues have been addressed by the no merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating that a sufficient reason for failing to raise those issues previously.” *Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574 (citation omitted).

¶7 In his direct appeal to this court, Turner alleged that he received ineffective assistance of trial counsel, and that his plea was not knowingly, intelligently, and voluntarily entered, at least in part because he said that he did not understand the elements of the crime, and he never actually entered a guilty plea. We rejected these arguments and concluded that his plea was proper. We also rejected his claim that his trial counsel was ineffective. If Turner is asserting new reasons why his trial counsel was ineffective, he has not offered any reason why he did not raise these grounds in his previous appeal. We conclude that the issues Turner raises here have been raised and decided in his previous appeal, or, to the extent that he is raising new claims, they are barred by *Escalona-Naranjo*. We affirm.¹

By the Court.—Order affirmed.

¹ Even assuming that Turner’s claim that his postconviction counsel was ineffective is not barred by *Escalona*, we would still affirm. As the circuit court found, Turner’s claim that trial counsel was ineffective for failing to pursue the argument of “imperfect” self-defense is conclusory and self-serving. To establish an ineffective assistance of counsel claim, a defendant must show both that counsel’s performance was deficient and that he or she was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel is not ineffective for failing to pursue a meritless claim. See *State v. Toliver*, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994). To establish “imperfect self-defense,” the defendant must show evidence that he or she “was in imminent danger of death or great bodily harm and that the force [he or she] used was necessary to defend” him or herself. *State v. Head*, 2002 WI 99, ¶124, 255 Wis. 2d 194, 648 N.W.2d 413. The facts of record established that Turner shot the victim in the leg. When the victim fell to the ground, Turner then shot him in the head five or six times. The shots to the head were the cause of death. With these facts, a claim of imperfect self-defense would have been meritless. Given this, and the overwhelming evidence of Turner’s guilt, he cannot establish that his trial counsel’s failure to pursue such a defense was either deficient performance or prejudicial. Consequently, his postconviction counsel was not ineffective for failing to make such an argument.

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

