

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 2008

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. 2006AP2126

Cir. Ct. No. 1999CF6152

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RAYMOND D. BLALOCK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
DANIEL L. KONKOL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Raymond D. Blalock appeals *pro se* from a circuit court order denying his WIS. STAT. § 974.06 (2005-06)¹ motion. He seeks to

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

withdraw a guilty plea. The circuit court found that Blalock's motion is procedurally barred, and we affirm.

Background

¶2 Blalock pled guilty to one count of armed robbery. *See* WIS. STAT. § 943.32(2) (1999-2000). In February 2001, the circuit court imposed a twenty-year consecutive sentence. Blalock then filed a sequence of motions for postconviction relief with the assistance of appointed counsel. In May 2003, following a *Machner* hearing,² the circuit court denied Blalock's claims that trial counsel was ineffective but agreed that Blalock had been sentenced on inaccurate information. The court resentenced Blalock to ten years in prison, consecutive to a state revocation term but concurrent to a federal sentence.

¶3 Although evidently still represented by counsel, Blalock filed *pro se* motions in August and October 2003, asking the circuit court to further modify his sentence. The circuit court denied relief, but Blalock's postconviction attorney successfully moved for reconsideration. Postconviction counsel then brought two additional motions, in March and May 2004, first persuading the circuit court to make Blalock's armed robbery sentence concurrent with his state revocation term and then obtaining additional sentence credit. These were postconviction

² An evidentiary hearing to determine trial counsel's effectiveness is known as a *Machner* hearing. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

counsel's final court actions on Blalock's behalf. Postconviction counsel closed his file in May 2004.³

¶4 Blalock brought a *pro se* motion in March 2006, asking the circuit court to amend the judgment of conviction or modify his sentence. That motion was denied, as was Blalock's motion to reconsider. Blalock did not appeal.

¶5 Blalock next filed a motion claiming that his trial attorney was ineffective in two respects: (1) by failing to explain the elements of armed robbery; and (2) by failing to explain how a state sentence might impact federal incarceration. He further alleged ineffective assistance of postconviction counsel in failing to pursue essential lines of questioning during the *Machner* hearing.⁴ The circuit court held that Blalock's claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994). This appeal followed.

Discussion

¶6 A defendant is barred from pursuing claims in a subsequent appeal that could have been raised in an earlier postconviction motion or direct appeal unless the defendant provides a "sufficient reason" for not raising them previously. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Blalock contends that his instant

³ According to the public defender's report regarding Blalock's eligibility for appointed counsel in the instant proceeding, postconviction counsel closed the file in May of 2004 with a letter to his client stating that he was acting "based on our discussion that you do not want me to file a no merit report."

⁴ In the circuit court, Blalock also contended that his postconviction attorney was ineffective in failing to file a no-merit report. Blalock has not briefed or argued this claim on appeal. Consequently, we deem the issue waived and address it no further. See *State ex rel. Peckham v. Krenke*, 229 Wis. 2d 778, 782 n.3, 601 N.W.2d 287 (Ct. App. 1999).

claims against trial counsel were not pursued earlier because his postconviction attorney was ineffective in failing to raise them. He contends that he could not raise ineffective assistance of postconviction counsel until counsel's representation ended at the conclusion of the direct appeal process. His reasons are insufficient justification for bringing a serial postconviction motion because they fail to explain why he could not have raised these issues in his March 2006 *pro se* motion.

¶7 Ineffective assistance of postconviction counsel can justify an additional motion pursuant to WIS. STAT. § 974.06. *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 683, 556 N.W.2d 136 (Ct. App. 1996). *Rothering*, however, does not extend to an unlimited number of successive postconviction motions. Blalock had the opportunity in his March 2006 *pro se* motion to raise issues not addressed by his postconviction attorney and to challenge postconviction counsel's effectiveness. A defendant may not raise some issues first, then raise others later after assessing the success of the initial attack. *See Escalona-Naranjo*, 185 Wis. 2d at 185. Successive claims "clog the court system and waste judicial resources." *State ex rel Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). The circuit court properly denied Blalock's motion.

By the Court.—Order affirmed.

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

