COURT OF APPEALS
DECISION
DATED AND FILED

March 25, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP287 **Cir. Ct. No. 2001CF1411**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRACY L. SINGLETON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: TIMOTHY M. WITKOWIAK, Judge. *Affirmed*.

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Tracy L. Singleton appeals from the order that denied his motion for postconviction relief under WIS. STAT. § 974.06 (2005–06).[1]

[1] All references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

Singleton argues that he received ineffective assistance of appellate counsel because counsel failed to argue that: (1) Singleton's plea colloquy was inadequate; (2) his trial counsel was ineffective because counsel did not tell him that the statute numbers and elements of the crime with which he was charged had changed; and (3) the trial court erroneously exercised its "sentencing discretion" when it allowed him to plead guilty without "clear evidence that the defendant had clear knowledge of what he is pleading to."[2] Because we conclude that these arguments are barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185–186, 517 N.W.2d 157 (1994), we affirm.

¶2 In 2001, Singleton pled guilty to one count of conspiracy to deliver cocaine. In 2002, he filed a postconviction motion seeking to withdraw his plea, alleging that he received ineffective assistance of trial counsel. The trial court denied the motion and Singleton appealed. This court affirmed the order and the judgment of conviction in 2003. In 2005, acting *pro se*, Singleton filed another postconviction motion to withdraw his plea based on ineffective assistance of trial counsel. The postconviction court denied that motion and we affirmed. In 2006, again acting *pro se*, Singleton filed his third postconviction motion seeking to withdraw his plea, alleging that he received ineffective assistance of trial counsel. The postconviction court also denied the motion. Singleton now appeals from this order.

¶3 We conclude that Singleton's claims are barred by ***Escalona***. In ***Escalona***, the supreme court held that: (1) all grounds for relief under WIS. STAT.

[2] Although Singleton identifies this as an "abuse of sentencing discretion," it appears to be a restatement of his first claim that the plea colloquy was inadequate.

§ 974.06 must be raised in a petitioner's original, supplemental, or amended motion; (2) an issue that was finally adjudicated in a prior postconviction motion may not serve as the basis for a further § 974.06 motion; and (3) issues that could have been, but were not, raised in an earlier § 974.06 motion may not be raised in a later motion unless the party establishes a "sufficient reason" for failing to previously raise the issues. ***Escalona***, 185 Wis. 2d at 181–182.

¶4 Singleton attempts to overcome the bar of ***Escalona*** on two grounds: (1) by framing the issue now as ineffective assistance of appellate counsel, arguing that his appellate counsel should have raised the issues in the direct appeal; and (2) by saying that he did not raise the issues previously because he had not received transcripts from his appellate counsel before he filed his prior postconviction motions. While ineffective assistance of appellate counsel might explain why the issues were not raised in his direct appeal, it does not explain why Singleton did not raise these issues in his first WIS. STAT. § 974.06 motion. *See* ***State ex rel. Dismuke v. Kolb***, 149 Wis. 2d 270, 273–274, 441 N.W.2d 253 (Ct. App. 1989).

¶5 To support his claim about not receiving the transcripts, Singleton includes in his appendix a copy of a letter from his counsel. Singleton, however, did not make this argument to the circuit court and the letter is not part of the record on appeal. Generally, we will not consider an issue raised for the first time on appeal, *see* ***Segall v. Hurwitz***, 114 Wis. 2d 471, 489, 339 N.W.2d 333 (Ct. App. 1983), or a document that is not part of the record, *see* ***State v. Aderhold***, 91 Wis. 2d 306, 314, 284 N.W.2d 108 (Ct. App. 1979).

¶6 Further, Singleton has not explained why he did not wait until he received the transcripts from counsel before bringing a postconviction motion. As

the supreme court stated: "We need finality in our litigation." ***Escalona***, 185 Wis. 2d at 185. "Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose" of WIS. STAT. § 974.06. ***Escalona***, 185 Wis. 2d at 185. We conclude that Singleton's claims are barred by this rule. Consequently, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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