

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 4, 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. 2007AP2626

Cir. Ct. No. 2001CF5745

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LUIS O. SANTIAGO,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Luis O. Santiago appeals from the order denying his motion for postconviction relief. He argues that the circuit court erred when it denied his motion to withdraw his plea without holding a hearing. Because we

conclude that the issues Santiago raises are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), we affirm.

¶2 In 2002, Santiago pled no contest to one count of felony murder and one count of armed robbery, with threat of force, as a party to a crime. The court sentenced him to a total of fifty years of initial confinement and twenty years of extended supervision. Santiago then filed a motion for postconviction relief, which was denied by the circuit court. Santiago appealed from the judgment and order, and we affirmed.

¶3 In 2007, Santiago filed a motion under WIS. STAT. § 974.06 (2005-06),¹ asking to be allowed to withdraw his plea. He argued that his plea was not knowingly and voluntarily entered for two reasons: (1) his native language is Spanish, and although he had a Spanish interpreter at the plea hearing, he did not understand the words she was translating for him; and (2) he has a learning disability, and as a result, had “trouble processing” the information he was given at the hearing. He further stated that the issue was not raised in his initial postconviction motion because “his appellate counsel never discussed withdrawal of plea issues.”

¶4 The circuit court denied the motion without holding a hearing. The court noted that the motion did not specifically allege ineffective assistance of counsel, nonetheless, the court reviewed the matter as a claim of ineffective assistance of postconviction counsel under *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 556 N.W.2d 136 (Ct. App. 1996). The court

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

declined to hold a hearing on the issue, and denied the motion on the ground that the allegations were not sufficient to warrant a hearing.

¶5 We affirm, but for a different reason. See *State v. Holt*, 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985). In his brief to this court, Santiago once again argues that his plea was not knowingly, intelligently, and voluntarily entered for the same reasons he asserted in the circuit court. He does not allege that he received ineffective assistance of postconviction or appellate counsel.

¶6 In *Escalona*, the supreme court held that:

(1) all grounds for relief under WIS. STAT. § 974.06 (2003-04) must be raised in a petitioner's original, supplemental, or amended motion; (2) an issue 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 "sufficient reason" for failing to previously raise the issues.

State v. Tillman, 2005 WI App 71, ¶1, 281 Wis. 2d 157, 696 N.W.2d 574 (footnote omitted).

¶7 The issues Santiago raises in this appeal could have been, but were not raised in his initial postconviction motion or appeal. Santiago has not offered a sufficient reason for his failure to raise this issue in his previous motion or appeal. We conclude, therefore, that the issues he raises are barred by *Escalona*. 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.

