

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 19, 2009

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. 2008AP2777

Cir. Ct. No. 2000CF4323

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JIMMIE LEE ELLIS,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Jimmie Lee Ellis appeals from an order that denied his postconviction motion filed pursuant to WIS. STAT. § 974.06 (2007-

08).¹ The circuit court concluded that Ellis's claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

BACKGROUND

¶2 A jury found Ellis guilty of possessing between five and fifteen grams of cocaine with intent to deliver as a subsequent drug offense. The circuit court imposed a twenty-year term of imprisonment bifurcated as fifteen years of initial confinement and five years of extended supervision. Ellis appealed, and his appellate counsel filed a no-merit report. Ellis submitted three responses raising many claims of error. This court summarily affirmed. *State v. Ellis*, No. 2003AP3119-CRNM, unpublished slip op. (WI App May 23, 2005) (*Ellis I*).

¶3 Ellis next filed a series of postconviction motions and one appeal to this court, all of which were unsuccessful. In his eighth postconviction motion, which underlies the instant appeal, he claimed that his trial counsel was ineffective by: (1) failing to object to the sufficiency of the evidence at the preliminary hearing; (2) failing to object to Ellis's warrantless arrest, search, and seizure; and (3) failing to move for a directed verdict on the ground that the State did not meet its burden of proof. The circuit court concluded that Ellis's claims were barred, and this appeal followed.

DISCUSSION

¶4 Initially, we note that Ellis does not include in his appellate briefs any substantive discussion of his claims. An appellate brief requires an argument

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

that demonstrates why the litigant should prevail, accompanied by supporting legal authority. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). We will not consider issues that are inadequately developed, and we deny Ellis's claims on this basis. *See id.* at 646-47.

¶5 Moreover, a defendant may not pursue 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 those claims previously. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. The bar also applies where the direct appeal was conducted pursuant to the no-merit procedure of WIS. STAT. RULE 809.32. *State v. Tillman*, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574. When a defendant previously pursued a direct appeal pursuant to RULE 809.32, however, this court will not apply a procedural bar to a subsequent claim unless we conclude that "the no merit procedures were in fact followed." *Tillman*, 281 Wis. 2d 157, ¶20. Further, we must be satisfied that the earlier appeal provides "a sufficient degree of confidence warranting the application of the procedural bar under the particular facts and circumstances of the case." *Id.* Whether litigation is procedurally barred presents a question of law that we review *de novo*. *Id.*, ¶14.

¶6 This court resolved Ellis's appeal from the order denying his sixth postconviction motion in *State v. Ellis*, No. 2007AP1080, unpublished slip op. (WI App Aug. 5, 2008) (*Ellis II*). There we assessed the sufficiency of the proceedings in *Ellis I* in light of the considerations identified in *Tillman* and concluded that "we are satisfied the no-merit procedure warrants the application of the bar in this case." *Ellis II*, No. 2007AP1080, ¶4. *Ellis II* established the law of the case, and we must abide by that decision in all subsequent proceedings. *See State v. Casteel*, 2001 WI App 188, ¶15, 247 Wis. 2d 451, 634 N.W.2d 338.

Accordingly, Ellis’s current claims are barred absent a sufficient reason for an additional postconviction proceeding.

¶7 Ellis claims that both he and the circuit court failed to identify previously the issues that he now wishes to present. He offers this as a sufficient reason for serial litigation.

¶8 In fact, Ellis presented all of his current claims, or nearly identical variants, in prior proceedings. In *Ellis I*, we addressed why “it would lack arguable merit to challenge trial counsel’s failure to file a suppression motion,” and why “challenging the bind-over decision would lack arguable merit.” *Id.*, 2003AP3119-CRNM, at 3. Further, we identified Ellis’s complaints as including an allegation that “the evidence was insufficient.” *Id.* In his sixth postconviction motion, Ellis alleged that his trial counsel “was ineffective for not filing a motion for a directed verdict.”² Therefore, Ellis has stated no sufficient reason for an additional postconviction motion. His claims are barred.

By the Court.—Order affirmed.

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

² As the State points out, Ellis’s trial counsel did move for a directed verdict. The circuit court denied the motion, concluding that the State presented sufficient evidence for the trier of fact to find Ellis guilty beyond a reasonable doubt.

