COURT OF APPEALS DECISION DATED AND FILED

June 16, 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. 2008AP1430 **Cir. Ct. No. 2008CV3284**

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

STATE OF WISCONSIN EX REL. MELVIN SHELTON,

PETITIONER-APPELLANT,

V.

JOHN HUSZ, WARDEN, MILWAUKEE SECURE DETENTION FACILITY,

RESPONDENT-RESPONDENT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. In 1987, Melvin Shelton was convicted of one count of first-degree sexual assault of a child. *See* WIS. STAT. § 940.225(1)(d)

(1985-86).[1] Shelton's conviction was affirmed on direct appeal. ***State v. Shelton***, No. 88-1441-CRNM, unpublished slip op. (Wis. Ct. App. Mar. 7, 1999). Since that time, Shelton has filed numerous postconviction motions in the circuit court, and he has appealed at least four previous times. *See* ***State v. Shelton***, No. 99-1624, unpublished slip op. at 2 (Wis. Ct. App. Dec. 6, 1999).

¶2 On March 4, 2008, Shelton filed a "petition for a writ of habeas corpus." Because Shelton was arguing that the Department of Corrections was holding him beyond his maximum discharge date, the circuit court construed the petition as seeking certiorari review of the revocation of Shelton's parole. The court then dismissed the petition as duplicative of another petition already filed in the circuit court. Shelton appeals.

¶3 On appeal, Shelton does not take issue with the circuit court's construction of his petition as a certiorari petition nor does he argue that the court's dismissal of the petition as duplicative was improper. Rather, his sole argument travels back to his arrest which he contends was illegal because he was arrested in his house in the absence of either a warrant or exigent circumstances.

¶4 Shelton's argument is procedurally barred. Shelton has had both a direct appeal and numerous postconviction proceedings. Issues that have been finally adjudicated, waived, or not raised in a prior postconviction motion or appeal cannot be raised in a WIS. STAT. § 974.06 motion unless there is "sufficient reason" for failing to raise them in the original motion. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). A defendant must "raise

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

all grounds regarding postconviction relief in his or her original, supplemental or amended motion." ***Id.***; *see also* WIS. STAT. § 974.06(4) ("Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived … in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion," absent sufficient reason.).

¶5 In ***State v. Evans***, 2004 WI 84, ¶33, 273 Wis. 2d 192, 682 N.W.2d 784, *overruled on other grounds by* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900, our supreme court further explained the implications of ***Escalona-Naranjo***, declaring the rule set forth in ***Escalona-Naranjo*** is designed to ensure finality in criminal litigation and to "'compel[] a [defendant] 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.'" ***Evans***, 273 Wis. 2d 192, ¶33 (citation omitted) (first set of brackets supposed by ***Evans***).

¶6 This court need not address the substantive portion of Shelton's appeal because under ***Escalona-Naranjo***, he is procedurally barred from raising the issue. Shelton's conviction was affirmed on direct appeal, and all of his previous motions for relief under WIS. STAT. § 974.06 have been unsuccessful. Because the current issue was not previously raised in any of Shelton's previous postconviction litigation or appeals, the issue is barred under ***Escalona-Naranjo***. Shelton has not provided the court with any reason, let alone a sufficient reason, why he could not have raised this issue previously. "[D]ue process for a convicted defendant permits him or her a single appeal of [a] conviction and a single opportunity to raise claims of error …." ***State ex rel. Macemon v. Christie***, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998). Shelton has already had more

than that single opportunity—in both his direct appeal and in his subsequent § 974.06 motions. Therefore, he is procedurally barred from attempting to raise this additional claim in this latest proceeding.

By the Court.—Order affirmed.

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