

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 2010

A. John Voelker
Acting 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. 2009AP3099-CR

STATE OF WISCONSIN

Cir. Ct. Nos. 1998CF1861
1998CF1927

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

NANCY EZELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
CARL ASHLEY, Judge. *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Nancy Ezell appeals, *pro se*, from an order denying her eighth postconviction motion. The circuit court determined that her claims are barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree and affirm.

BACKGROUND

¶2 Ezell pled guilty to one count of conspiracy to deliver cocaine, six counts of delivery of cocaine as a party to a crime, and one count of attempted receipt of stolen property as a party to a crime. She filed an appeal with the assistance of counsel, and this court affirmed. *State v. Ezell*, No. 00-0176-CR, unpublished slip op. (WI App. Apr. 9, 2001) (*Ezell I*). The supreme court denied review. Subsequently, Ezell filed multiple motions for postconviction relief, appealed twice to this court, and twice sought supreme court review, all without success. The State required nearly thirteen pages of its response brief in this appeal to catalog Ezell's history of collateral attacks on her conviction and sentence. We include only the briefest summary of that history here.

¶3 We affirmed the order denying Ezell's second postconviction motion in *State v. Ezell*, No. 2002AP1933, unpublished slip op. (WI App Mar. 26, 2003) (*Ezell II*). We affirmed the order denying Ezell's sixth postconviction motion in *State v. Ezell*, No. 2007AP2232, unpublished slip op. (WI App. Sept. 17, 2008) (*Ezell III*).¹ Ezell's present appeal is her fourth, filed to challenge the order denying her eighth motion for postconviction relief.

DISCUSSION

¶4 WISCONSIN STAT. § 974.06 permits defendants to raise constitutional claims after the time for a direct appeal has passed. *State v. Henley*, 2010 WI 97,

¹ Our opinion resolving Ezell's third appeal indicated that Ezell appealed from an order that denied her fifth postconviction motion. See *State v. Ezell*, No 2007AP2232, unpublished slip op. ¶4 (WI App. June 17, 2008) (*Ezell III*). The State alerts us that the recitation of Ezell's litigation history in *Ezell III* omits a postconviction motion filed on June 23, 2003, and that in fact Ezell's third appeal followed the denial of her sixth postconviction motion.

¶¶51-52, ___ Wis. 2d ___, 787 N.W.2d 350. The remedy, however, is limited. A defendant is barred from pursuing claims under § 974.06 that could have been raised in an earlier postconviction motion or direct appeal absent a “sufficient reason” for not raising them previously. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. Whether a defendant’s claims are prohibited by *Escalona-Naranjo* presents a question of law that this court reviews *de novo*. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶5 In this appeal, Ezell argues that the State breached the plea bargain, the charges against her were multiplicitous, the search warrant and criminal complaint were defective, and she received ineffective assistance from her trial counsel.² Although she did not cite WIS. STAT. § 974.06 as the authority for her litigation, Ezell stated in her postconviction motion that she was “bringing [her claims] on [c]onstitutional grounds.” Constitutional claims are cognizable under § 974.06, but Ezell failed to include in her motion any reason that her claims may be heard in light of the *Escalona-Naranjo* procedural bar.

¶6 In her appellate briefs, Ezell asserts that she has proceeded *pro se* throughout most of her litigation and that her lack of legal sophistication constitutes a sufficient reason for her to receive “one last opportunity to be heard.” Because Ezell did not offer this reason for serial litigation in her postconviction motion, she cannot rely on it in this court. “Defendants must, at the very minimum, allege a sufficient reason in their motions to overcome the *Escalona-Naranjo* bar.” *State v. Allen*, 2010 WI 89, ¶46, ___ Wis. 2d ___, 786 N.W.2d

² In her circuit court filing, Ezell included a claim that a new factor warrants modification of her sentence. She does not brief that issue on appeal.

124. Moreover, “[t]he right to self-representation is ‘[not] a license not to comply with relevant rules of procedural and substantive law.’” *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (citation omitted, brackets in *Waushara County*).

¶7 Ezell offered no reason, much less a sufficient reason, in her circuit court submission to justify an eighth postconviction motion. Therefore, her claims are barred.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

