

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 15, 2011**

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. 2010AP235**

**Cir. Ct. No. 2001CF2489**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT 1**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ROBERT P. KIDD,**

**DEFENDANT-APPELLANT.**

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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. Robert P. Kidd, *pro se*, appeals from a circuit court order denying his motion for postconviction relief that he filed pursuant to WIS.

STAT. § 974.06 (2009–10).<sup>1</sup> The circuit court denied Kidd’s motion on grounds that the issues raised are procedurally barred.<sup>2</sup> We agree and affirm.

¶2 In 2001, Kidd pled guilty to three counts of second-degree reckless homicide while using a dangerous weapon. He was sentenced to fifteen years of initial confinement and five years of extended supervision on each count, to be served consecutively. Appointed appellate counsel filed a no-merit report, Kidd responded and appellate counsel filed a supplemental no-merit report. In our decision, we considered whether there was any basis to challenge the validity of Kidd’s guilty pleas or his sentence. *See State v. Kidd*, No. 2002AP2896-CRNM, unpublished slip op. at 2–4 (WI App Aug. 7, 2003). We specifically considered the fact that Kidd’s competency had been evaluated and that Kidd had been taking medication at the time of his plea.<sup>3</sup> *See id.* at 2–3 and n.2. We affirmed after concluding that there were no meritorious issues and that any further proceedings would lack arguable merit. *See id.* at 4. Kidd’s petition for review in the Wisconsin Supreme Court was denied.

¶3 In June 2008, Kidd filed a *pro se* WIS. STAT. § 974.06 postconviction motion in the circuit court alleging that his guilty pleas had been coerced and that they were not knowingly, intelligently and voluntarily entered

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> The circuit court also denied Kidd’s subsequent motion for reconsideration, but Kidd does not appeal from that order.

<sup>3</sup> The issue of Kidd’s competency was raised at the trial court prior to and after he pled guilty. In each instance, the examiner concluded that Kidd was competent. After the final evaluation, Kidd personally indicated to the trial court that he wanted to waive his right to a hearing on his competency and that he wanted the trial court to adopt the forensic psychiatrist’s finding that Kidd was competent to proceed.

because he was on medication at the time he pled guilty. Kidd also raised a host of other issues, including the lawfulness of his arrest and confession and his desire for a trial. The circuit court denied the motion on grounds that it was procedurally barred. The circuit court also denied Kidd's subsequent motion for reconsideration. Kidd did not appeal either order.

¶4 In November 2009, Kidd filed the *pro se* WIS. STAT. § 974.06 motion that is at issue on appeal. His motion, as well as his appellate briefs, are difficult to understand, but it appears that Kidd is once again questioning the validity of his guilty pleas, the length of his sentence and his competency to have pled guilty.<sup>4</sup> He also briefly references his custodial interrogation and suggests that he is innocent of the crimes, despite the fact that he confessed and stipulated to the facts offered in his confession when he pled guilty. Kidd states that he did not previously raise these issues on direct appeal because they had not been preserved in the circuit court by way of postconviction motion and that he is now alleging ineffectiveness of postconviction counsel. He offers no detailed explanation why he did not raise these issues in his 2008 postconviction motions or pursue an appeal of the circuit court orders denying his 2008 postconviction motions, noting only that he “is inexperienced in the law” and “[d]efendants cannot be expected to learn all the rules of filing motions to seek relief in their cases.”

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<sup>4</sup> On appeal, Kidd also appears to raise new issues. These will not be addressed, because we do not consider issues raised for the first time on appeal, *State v. Champlain*, 2008 WI App 5, ¶17, 307 Wis. 2d 232, 245, 744 N.W.2d 889, 895, or in a reply brief, *State v. Chu*, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 686 n.5, 643 N.W.2d 878, 887 n.5.

¶5 We conclude that the issues raised in Kidd’s 2009 postconviction motion are barred. First, the general rule is that a guilty plea “waives all nonjurisdictional defects, including constitutional claims.” *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 73, 716 N.W.2d 886, 892 (citation omitted). There are exceptions, such as challenges to the validity of a guilty plea.<sup>5</sup> To the extent Kidd has raised issues that do not fall within an exception to the guilty-plea-waiver rule, they are forfeited.

¶6 Second, Kidd’s postconviction motion raises numerous issues that we already considered in his no-merit appeal, such as challenges to the voluntariness of his plea and the severity of his sentence. Those issues are barred. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512, 514 (Ct. App. 1991) (“A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.”).

¶7 Third, Kidd’s latest postconviction motion is barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). *Escalona-Naranjo* held that a defendant cannot raise an argument in a subsequent postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Id.*, 185 Wis. 2d at 181–182, 517 N.W.2d at 162; *see also State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 22, 665 N.W.2d 756, 766 (“[C]laims that

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<sup>5</sup> Another exception is provided by statute: WIS. STAT. § 971.31(10) states that orders denying motions to suppress evidence or challenging the admissibility of a statement may be reviewed on appeal even when the defendant pleads guilty. In this case, no motions to suppress were ever filed, so § 971.31(10) does not apply.

could have been raised ... in a previous § 974.06 motion are barred from being raised in a subsequent § 974.06 postconviction motion” unless the movant provides a sufficient reason “why the claims were not raised on direct appeal or in a previous § 974.06 motion.”). Ineffective assistance of postconviction counsel can justify an additional motion pursuant to WIS. STAT. § 974.06. *See State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 683, 556 N.W.2d 136, 140 (Ct. App. 1996). *Rothering*, however, does not extend to an unlimited number of successive postconviction motions. Kidd had the opportunity in his 2008 motions to challenge postconviction counsel’s effectiveness. He chose not to appeal the denial of those motions. Now, in his third § 974.06 motion, he seeks to raise some of those same issues and to raise new issues. The only explanation he offers for filing yet another postconviction motion is his ignorance of the law. Although we grant *pro se* criminal defendants considerable latitude, every person is presumed to know the law and cannot claim ignorance as a defense. *See State v. Jensen*, 2004 WI App 89, ¶30, 272 Wis. 2d 707, 729, 681 N.W.2d 230, 241 (“Ignorance of the law is no defense.”). We are not persuaded that Kidd has offered a sufficient reason to raise the same or new issues in yet another § 974.06 motion. The circuit court properly denied Kidd’s motion as procedurally barred.

*By the Court.*—Order affirmed.

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

