

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 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. 2010AP703**

**Cir. Ct. No. 2004CF3300**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**DOUGLAS A. RUEHL,**

**DEFENDANT-APPELLANT.**

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

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

¶1 PER CURIAM. Douglas A. Ruehl, *pro se*, appeals an order denying his WIS. STAT. § 974.06 (2009-10)<sup>1</sup> motion without a hearing. We agree with the circuit court that the motion is procedurally barred, and we affirm.

¶2 In 2004, Ruehl pled guilty to one count of incest with a child, pursuant to a plea agreement in which the State agreed to dismiss a second charge of first-degree sexual assault. Ruehl was sentenced to fifteen years' initial confinement and ten years' extended supervision. Appointed counsel filed a no-merit appeal, to which Ruehl responded. After considering the no-merit report, response, a supplement report, and our own examination of the record, this court summarily affirmed the conviction in December 2005. In February 2010, Ruehl moved for relief under WIS. STAT. § 974.06, claiming that trial counsel was ineffective. The circuit court denied the motion as procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and Ruehl appeals.

¶3 It is well-settled that WIS. STAT. § 974.06 requires criminal defendants “to consolidate all their postconviction claims into *one* motion or appeal.” *See Escalona*, 185 Wis. 2d at 178 (emphasis in original). If a defendant’s grounds for relief were finally adjudicated, waived, or not raised in a prior postconviction motion or appeal, they may not form the basis for a new postconviction motion unless the defendant has a sufficient reason for failing to raise the issue previously. *See State v. Fortier*, 2006 WI App 11, ¶16, 289 Wis. 2d 179, 709 N.W.2d 893; *see also* § 974.06(4) and *Escalona*, 185 Wis. 2d at 181-82. Section 974.06 also prevents Ruehl from raising issues that he could have raised in

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

his no-merit response, absent sufficient reason. See *State v. Allen*, 2010 WI 89, ¶¶5, 41, 328 Wis. 2d 1, 786 N.W.2d 124.

¶4 Here, Ruehl asserts his current claims of ineffective assistance of trial counsel were not previously raised because postconviction counsel failed to raise them herself. See *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 682, 556 N.W.2d 136 (Ct. App. 1996) (claims of ineffective assistance of trial counsel must be preserved prior to appeal by postconviction motion; ineffective assistance of postconviction counsel may “in some circumstances” constitute sufficient reason for not raising an issue).

¶5 However, because Ruehl’s prior appeal was a no-merit appeal, he was free to raise any issues of his choosing in his response. See *Anders v. California*, 386 U.S. 738, 744 (1967). Postconviction counsel’s failure to file a motion was not an obstacle to Ruehl raising ineffective assistance of trial counsel and, in fact, Ruehl’s no-merit response did include such a claim. With his current motion, Ruehl simply fails to allege sufficient reason for not raising his current ineffective-assistance claims in his previous no-merit response.

¶6 Further, Ruehl cannot use a WIS. STAT. § 974.06 motion to re-raise claims, such as a challenge to the validity of his plea, that were previously disposed of by this court’s prior decision, no matter how he recasts them.<sup>2</sup> See *State v. Walberg*, 109 Wis. 2d 96, 103, 325 N.W.2d 687 (1982); *State v.*

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<sup>2</sup> To the extent that Ruehl claims his ineffective-assistance claim was deemed waived by this court under *State v. Bangert*, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986) (valid guilty plea waives nonjurisdictional defects and defenses), we observe that although we concluded some of Ruehl’s issues in his no-merit response were waived, we nevertheless specifically rejected his ineffective-assistance claim. See *State v. Ruehl*, No. 2005AP1973-CRNM, unpublished slip op. & order, 4-5 (Dec. 14, 2005).

*Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Accordingly, the circuit court properly denied the motion without a hearing.

*By the Court.*—Order affirmed.

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

