COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2270-CR **Cir. Ct. No. 2004CF4624**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDRE M. HICKS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Andre M. Hicks, *pro se*, appeals an order denying his motion to modify his sentence. He argues that the circuit court should modify his sentence because the circuit court relied on unreasonable and unsupported facts

in sentencing him and did not adequately explain why it chose to run his sentences consecutively rather than concurrently. We affirm.

¶2 Hicks was convicted in 2005, after a jury trial, of armed robbery with use of force, first-degree reckless injury, and possession of a firearm by a felon. The circuit court sentenced him to consecutive sentences totaling thirty-two years of imprisonment, with twenty years of initial confinement and twelve years of extended supervision.

¶3 Hicks contends that the circuit court should modify his sentence because the circuit court relied on unreasonable and unsupported facts in sentencing him and did not adequately explain why it chose to run his sentences consecutively rather than concurrently. Pursuant to WIS. STAT. § 973.19 (2009-10),[1] a defendant may move for sentence modification within ninety days of sentencing. Hicks filed his motion five years after he was convicted of the crimes, well outside the time limits imposed under § 973.19. While Hicks could have raised this claim on direct appeal, he did not do so. "[A]ny claim that could have been raised on direct appeal or in a previous Wis. Stat. § 974.06 … postconviction motion is barred from being raised in a subsequent § 974.06 postconviction motion, absent a sufficient reason." ***State v. Lo***, 2003 WI 107, ¶2, 264 Wis. 2d 1, 665 N.W.2d 756 (footnote omitted); ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Hicks has provided no reason, much less a sufficient reason, for failing to previously raise his sentence modification claim.

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 To circumvent the ***Escalona-Naranjo*** procedural bar, Hicks argues that the circuit court's failure to explain its reasons for imposing consecutive sentences constitutes a "new factor" entitling him to sentence modification. A motion for sentence modification based on a new factor may be brought at any time. A new factor is "'a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties.'" ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). It goes without saying that the fact that the circuit court sentenced him consecutively, rather than concurrently, has been known to Hicks since the day the sentence was imposed. Since the information is not new, it does not constitute a "new factor" entitling Hicks to resentencing.

By the Court.—Order affirmed.

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