

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 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. 2011AP577

Cir. Ct. No. 2000CF5889

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AARON C. LANE,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Aaron C. Lane, *pro se*, appeals from an order that denied his postconviction motion filed pursuant to WIS. STAT. § 974.06

(2009-10).¹ The circuit court determined that Lane’s claims are procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree and affirm.

BACKGROUND

¶2 In 2002, a jury found Lane guilty of armed robbery as a party to a crime. He pursued an appeal with the assistance of appointed counsel. We affirmed his conviction. *See State v. Lane*, No. 2003AP1079-CR, unpublished slip op. (WI App Dec. 5, 2003).

¶3 Lane, proceeding *pro se*, moved in 2010 to vacate a DNA surcharge imposed at sentencing. The circuit court denied the motion and then denied reconsideration. Lane did not appeal.

¶4 In 2011, Lane filed the *pro se* postconviction motion underlying this appeal. He claimed that his trial counsel was constitutionally ineffective by failing to seek a dismissal of the case and by failing to move to suppress his custodial statements. The circuit court concluded that the claims are barred, and Lane appeals.

DISCUSSION

¶5 “We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185. Thus, a prisoner must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Id.*

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

¶6 In this case, Lane pursued both an appeal with the assistance of counsel and *pro se* postconviction litigation before he filed the postconviction motion underlying the instant appeal. Therefore, we will not entertain his current claims unless he demonstrates a sufficient reason for failing to raise them in earlier proceedings. *See id.* at 184. We assess the sufficiency of a prisoner’s reason by examining the four corners of the postconviction motion. *See State v. Allen*, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

¶7 Lane included no reason for serial litigation in his most recent postconviction motion. On appeal, however, he argues that his omission should not bar his claims because the circuit court “should have construed [his] motion as ineffective assistance of postconviction counsel.” Ineffective assistance of postconviction counsel may in some circumstances constitute a sufficient reason for failing to raise claims in a first postconviction motion. *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 682, 556 N.W.2d 136 (Ct. App. 1996). Nonetheless, this principle does not aid Lane here. If he believed that ineffective assistance of postconviction counsel justified his failure to raise his claim in earlier litigation, he had an obligation to say so in his postconviction motion. “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, 328 Wis. 2d 1, 786 N.W.2d 124. We cannot overlook Lane’s failure to satisfy the minimum requirement necessary to sustain a second or subsequent postconviction motion.

¶8 Moreover, nothing in *Rothering* permits a defendant to file a series of *pro se* postconviction motions based on an assertion that his or her lawyer was ineffective early in the appellate process. Lane’s suggestion that postconviction counsel erred by failing to raise a claim on direct appeal is insufficient to explain

why Lane himself did not raise his current claims when he moved for postconviction relief from the DNA surcharge.

¶9 Lane offered no reason, much less a sufficient reason, in his circuit court submission to justify another postconviction motion. Therefore, his claims are barred.

By the Court.—Order affirmed.

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

