

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 22, 2012

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. 2010AP1720

Cir. Ct. No. 1996CF964321B

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

**EDWARD LEON JACKSON, SR.,
A/K/A DAMALI MUDINA KAFI,**

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
RICHARD J. SANKOVITZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Edward Leon Jackson, Sr., a/k/a Damali Mudina Kafi, appeals from an order that denied his postconviction motion filed under WIS. STAT. § 974.06. Because his claims are barred, we affirm.

I.

¶2 A jury convicted Jackson in 1997 of conspiracy to commit first-degree intentional homicide, conspiracy to commit arson, and possession of a fire bomb, all as a party to a crime. With the assistance of an appointed lawyer, Jackson filed a postconviction motion alleging that his trial lawyer gave him constitutionally ineffective assistance. He requested a new trial or resentencing. The circuit court denied postconviction relief. Jackson filed an appeal, but he voluntarily dismissed it.

¶3 In September 1999, Jackson filed a postconviction motion pursuant to WIS. STAT. § 974.06, and he filed another such motion in October 2000. The circuit court granted him no relief. Jackson voluntarily dismissed his appeal from the adverse order entered in 1999, and he did not initiate an appeal from the adverse order entered in 2000.¹

¶4 In April 2003, Jackson filed a third postconviction motion pursuant to WIS. STAT. § 974.06. Represented by a University of Wisconsin clinical professor of law, Jackson alleged that he was improperly convicted of multiple crimes when the facts demonstrated his involvement in only one conspiracy. The circuit court denied the claim, and he appealed. We affirmed in a published decision. *See State v. Jackson*, 2004 WI App 190, 276 Wis. 2d 697, 688 N.W.2d 688. The supreme court denied review.

¹ The clerk of circuit court transmitted a reconstructed Record for this appeal after advising the parties and this court that the Record “was misplaced some time ago.” Some of the documents relevant to Jackson’s 1999 and 2000 postconviction litigation are not in the reconstructed Record, and our summary of that litigation relies in part on circuit court docket entries for which corresponding documents are missing. These defects in the Record do not affect our resolution of Jackson’s appeal.

¶5 In 2010, Jackson, proceeding *pro se*, filed a fifth postconviction motion, his fourth under WIS. STAT. § 974.06. He alleged that: (1) the circuit court lacked subject matter jurisdiction to enter a judgment of conviction or impose sentence for the two conspiracy crimes; (2) his trial lawyer was ineffective; (3) justice miscarried; and (4) he is innocent. In a supplement to the motion, he asserted that his sentences are void. The circuit court denied relief, concluding that nothing in the submissions demonstrated lack of subject matter jurisdiction and that the claims are procedurally barred.² Jackson appeals.

II.

¶6 “[WISCONSIN STAT. §] 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *State v. Escalona-Naranjo*, 185 Wis.2d 168, 185, 517 N.W.2d 157, 163–164 (1994). A litigant who wishes to pursue a second or subsequent postconviction motion under § 974.06 may not do so without first demonstrating a sufficient reason for not raising the issue in the original postconviction proceeding. *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 22, 665 N.W.2d 756, 766. Whether a prisoner has presented a sufficient reason to avoid the procedural bar to serial litigation is a question of law that we review *de novo*. See *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175, 176 (Ct. App. 1997).

² Jackson states in his appellate brief that the circuit court denied a motion for postconviction discovery, but he does not allege that the circuit court erred by doing so, nor does he include any argument in regard to a discovery motion. We therefore do not address this issue. See *State v. Pettit*, 171 Wis. 2d 627, 646–647, 492 N.W.2d 633, 642 (Ct. App. 1992) (we address only issues that are adequately briefed).

¶7 Jackson argues that he may pursue his current litigation because, during earlier proceedings, he was “subjective[ly] ignoran[t] of the legal basis for his claim.” In support, he cites *State v. Howard*, 211 Wis. 2d 269, 564 N.W.2d 753 (1997), which, we note, was overruled in part by *State v. Gordon*, 2003 WI 69, 262 Wis. 2d 380, 663 N.W.2d 765. The *Howard* court held that a prisoner established a sufficient reason for failing to raise a claim during the prisoner’s first appeal when the supreme court later interpreted a governing statute in a way that created a “new rule of substantive law.” *Howard*, 211 Wis. 2d at 287–288, 564 N.W.2d at 762, *overruled on other grounds by Gordon*, 2003 WI 69, ¶40, 262 Wis. 2d at 402, 663 N.W.2d at 777. Jackson’s circumstances are not at all like those in *Howard*.

¶8 Jackson does not identify a new rule of substantive law developed after his earlier litigation. Rather, he asserts that the plain language of WIS. STAT. § 939.72(2) prohibits a conviction for “committing a conspiracy ... as a[] party to a crime.” In his view, the alleged prohibition deprived the circuit court of subject matter jurisdiction in his case. Jackson has not, however, identified any decision interpreting § 939.72(2) as he proposes. Indeed, he indicates that no such case exists. Nonetheless, he believes that his legal theory is supported by *State v. Tronca*, 84 Wis. 2d 68, 267 N.W.2d 216 (1978), and *State v. Moffett*, 2000 WI 130, 239 Wis. 2d 629, 619 N.W.2d 918. Whatever the holdings of those cases, the supreme court decided them in 1978 and 2000, respectively, well before Jackson filed his fourth postconviction motion in 2003. Jackson fails to offer a persuasive explanation for why he could not raise claims supported by *Tronca* and *Moffett* in his 2003 postconviction motion.

¶9 Jackson suggests, however, that his current litigation is not affected by the procedural bar of *Escalona-Naranjo* because he is challenging the circuit

court's subject matter jurisdiction. He argues that such a challenge cannot be waived. See *State v. Bush*, 2005 WI 103, ¶19, 283 Wis. 2d 90, 104–105, 699 N.W.2d 80, 87. We are not persuaded.

¶10 “The circuit court’s subject matter jurisdiction attaches upon the filing of the criminal complaint. The circuit court ‘lacks criminal subject[]matter jurisdiction only where the complaint does not charge an offense known to law.’ Further, ‘[o]nce criminal subject[]matter jurisdiction attaches, it continues until a final disposition of the case.’” *State v. Webster*, 196 Wis. 2d 308, 317, 538 N.W.2d 810, 813 (Ct. App. 1995) (citations omitted, brackets in *Webster*). Here, Jackson contends that he was charged with and convicted of nonexistent crimes because WIS. STAT. § 939.72(2) bars a conviction as both a conspirator and as a party to the crime that is the objective of the conspiracy. See *id.* The circuit court, however, lacks criminal subject matter jurisdiction only if the State fails to allege any crime in the criminal complaint. See *Webster*, 196 Wis. 2d at 317, 538 N.W.2d at 813. Jackson therefore is not aided by his thesis that, pursuant to § 939.72(2), some flaw infected the two charges that coupled a conspiracy allegation with a claim that he acted as a party to a crime.³ The complaint also alleged a third offense against Jackson, namely, that he possessed a firebomb as a party to a crime. He does not suggest that this offense is unknown to the law. He thus fails to raise a colorable claim that the circuit court lacked subject matter

³ We observe that “[n]othing in WIS. STAT. § 939.72 bars the State from charging a defendant with the crime of conspiracy and with being a party to the crime that is the objective of the conspiracy.” *State v. Moffett*, 2000 WI 130, ¶12, 239 Wis. 2d 629, 637, 619 N.W.2d 918 922. To the contrary, the statute “does not bar the State from bringing and proceeding with charges set forth in multiple statutes.” *Ibid.*

jurisdiction, or, correspondingly, that he is exempt from the requirements of *Escalona-Naranjo*.

¶11 Last, Jackson asserts that he should be permitted to pursue another postconviction motion because he has demonstrated his “actual innocence.” In support, he cites *Schlup v. Delo*, 513 U.S. 298 (1995). That case provides that a credible claim of actual innocence must be supported by “new reliable evidence ... that was not presented at trial.” *Id.* at 324. Here, Jackson relies on documents prepared by assistant district attorneys in November 1996. These documents are not “new.” Jackson submitted them with the postconviction motion that he filed in 2003. He offers no sufficient basis for failing to develop at that time any claim of innocence that those documents might support.⁴

¶12 “We need finality in our litigation.” *Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 163. “Successive, and often reformulated, claims clog the court system and waste judicial resources.” *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84, 87 (Ct. App. 1998). Because Jackson has not presented a sufficient reason for his serial litigation, we affirm.

By the Court.—Order affirmed.

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

⁴ We noted in our resolution of Jackson’s earlier appeal that Jackson “admitted to his role in a plan to fire bomb a Milwaukee police officer’s home.” *State v. Jackson*, 2004 WI App 190, ¶2, 276 Wis. 2d 697, 700, 688 N.W.2d 688, 689. As the State observes, his admission renders his claim of actual innocence particularly dubious.

