

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 19, 2012**

Diane M. Fremgen  
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. 2010AP2481**

**Cir. Ct. No. 2002CF4580**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ANTOINE D. EDWARDS,**

**DEFENDANT-APPELLANT.**

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Antoine D. Edwards, *pro se*, appeals an order denying his motion for postconviction relief brought pursuant to WIS. STAT.

§ 974.06 (2009-10).<sup>1</sup> Edwards contends that he is entitled to a new trial on the basis of newly discovered evidence and that he received ineffective assistance of trial counsel. We reject these arguments. Accordingly, we affirm.

¶2 Edwards first argues that he is entitled to a new trial on the basis of newly discovered evidence that shows that it was his brother, John Edwards, who shot the victim. Edwards presents two affidavits, one from Karlnell Davis and one from Antonio Strowder, who aver that they saw John Edwards shoot the victim.

¶3 A defendant seeking a trial on the basis of newly discovered evidence “must prove: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative.” *State v. Plude*, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (quotation marks and citation omitted). If the defendant proves all four criteria, then the circuit court must determine whether a reasonable probability exists that had the jury heard the newly discovered evidence, it would have had a reasonable doubt about the defendant’s guilt. *Id.* “The decision to grant or deny a motion for a new trial based on newly-discovered evidence is committed to the circuit court’s discretion.” *Id.*, ¶31.

¶4 The primary flaw with Edwards’ argument is that the proffered evidence is not new. Davis avers in his affidavit that he told Antoine Edwards in 2004 that he saw John Edwards shoot the victim. Strowder avers in his affidavit that he told Antoine Edwards in the summer of 2005 that he saw John Edwards

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

shoot the victim. Although both affidavits were signed in 2010, the evidence is not new because Edwards was aware of the information in the affidavits for five years before he brought his claim of newly discovered evidence, during which time he pursued other postconviction claims without raising this argument. Edwards is not entitled to a new trial on the basis of newly discovered evidence because the evidence is not new.

¶5 Edwards next argues that he received ineffective assistance of trial counsel because his attorney failed to adequately investigate before trial and, if he had, he would have uncovered the two potential defense witnesses, discussed above, who would have testified that John Edwards was the shooter. When a defendant's claim for relief could have been, but was not, raised in a prior postconviction motion or during an earlier direct appeal, the claim is procedurally barred absent a sufficient reason for failing to previously raise it. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Edwards decided to take a direct appeal *pro se* and did not raise this issue in his direct appeal. We affirmed his conviction. He then brought a postconviction motion under WIS. STAT. § 974.06 *pro se*, but did not raise this issue. He offers no reason for not raising this ineffective assistance of counsel claim in either of the earlier proceedings. Therefore, we conclude that the claim is barred under *Escalona-Naranjo*.

*By the Court.*—Order affirmed.

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

