

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 7, 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. 2011AP2655

Cir. Ct. No. 2008CF178

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD WAYNE TALERONIK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Ronald Taleronik, pro se, appeals an order denying a motion for postconviction relief. He seeks to have his consecutive sentences modified to concurrent sentences. We reject his arguments and affirm.

¶2 Taleronik was convicted of theft by false representation for defrauding Carol Champion of \$32,000 in cash by using a deceptive scheme. Taleronik entered an *Alford* plea to the charge.¹ The circuit court imposed two years' initial confinement and three years' extended supervision, consecutive to any other sentence Taleronik was serving.

¶3 In 2010, Taleronik moved for postconviction relief, seeking sentence modification and sentence credit. He sought to have his sentences made concurrent rather than consecutive to the other sentences he was serving. After a hearing, the circuit court denied the motion. Taleronik appealed, but then voluntarily dismissed his appeal.

¶4 In 2011, Taleronik again moved for postconviction relief, seeking sentence modification. He again sought to have his sentences made concurrent rather than consecutive. Taleronik argued in his motion that his consecutive sentences would not allow him to begin to pay restitution until 2020, but if his sentence were made concurrent to his other sentences, he would be able to begin paying restitution immediately. He also claimed this "new factor" was not fully understood at previous hearings.

¶5 The circuit court denied his motion without a hearing. The court concluded Taleronik's motion was untimely, procedurally barred because he had raised the issues in his prior postconviction motion, and meritless. Taleronik now appeals.

¹ Referring to *North Carolina v. Alford*, 400 U.S. 25 (1970).

¶6 A defendant is required to raise all grounds for relief in an initial postconviction motion, or on direct appeal. *See State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). Grounds that are raised in the initial postconviction motion may not be raised in subsequent motions. *Id.* Convicted defendants are not entitled to pursue an endless succession of postconviction remedies. *Id.*

¶7 WISCONSIN STAT. § 974.06² also acts to bar a defendant from raising in a successive postconviction motion any claim that he or she could have raised on direct appeal or in an initial postconviction motion, unless a “sufficient reason” is provided for not doing so. *Escalona-Naranjo*, 185 Wis. 2d at 185. A defendant who fails to raise claims in his or her initial motion has the burden to show a sufficient reason for having failed to do so. *Id.* at 184.

¶8 Our review of Taleronik’s motions confirms that the circuit court correctly concluded that he raised his current claim in his prior motion. Taleronik seeks to repackage his claim, but however he phrases it, Taleronik is arguing that his sentence should be made concurrent to his other sentences so that he can begin to pay restitution to his victim now, rather than in 2020. This is precisely the claim he raised in his 2010 motion. His claim is therefore barred under WIS. STAT. § 974.06(4) and *Escalona-Naranjo*.

¶9 Even were we to reach the merits, Taleronik’s claim would fail. To prevail, Taleronik would need to demonstrate both the existence of a new factor and that the new factor justifies modification of the sentence. *See State v. Harbor*,

² References to Wisconsin Statutes are to the 2009-10 version unless noted.

2011 WI 28, ¶¶36-38, 333 Wis. 2d 53, 797 N.W.2d 828. New factors must be proved by clear and convincing evidence. *State v. Franklin*, 148 Wis. 2d 1, 8-9, 434 N.W.2d 609 (1989).

¶10 In denying Taleronik’s current motion, the circuit court noted that the court and both parties were aware at sentencing that Taleronik could not begin to pay the victim restitution until his other sentences were discharged, and that he was unlikely to make restitution in this case. The sentencing hearing transcript confirms this understanding. Taleronik has failed to present clear and convincing evidence of a new factor.

¶11 Even if we could somehow conclude Taleronik demonstrated the existence of a new factor, it would not warrant sentence modification. Taleronik does not assert that his payment of restitution is somehow relevant to proper sentencing factors, including the seriousness of his crime, the need to protect the public or his character. Instead, he argues that the court should modify his sentence because it would benefit the victim.

¶12 However, Taleronik fails to present evidence that the victim believes it would benefit her to have his sentence modified. In fact, the victim attended Taleronik’s 2010 motion hearing, and she made a statement. She said “the sentence that he has is the sentence that he earned. And please, let it stand, because it has caused great hardship for me and my family.” Taleronik is not entitled to relief, and the circuit court appropriately exercised its discretion by denying his current motion without an evidentiary hearing. See *State v. Bentley*, 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996).

By the Court.—Order affirmed.

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

