COURT OF APPEALS
DECISION
DATED AND FILED

September 11, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1923 **Cir. Ct. No. 1999CF1337**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTONIO T. MADDOX,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Antonio T. Maddox, *pro se*, appeals from an order denying his second WIS. STAT. § 974.06 motion. The circuit court determined that Maddox's claims were procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

BACKGROUND

¶2 In March of 1999, Maddox shot and killed two men in a Milwaukee tavern. He pled guilty to two counts of intentional homicide with a dangerous weapon, one in the first-degree and the other in the second-degree. He subsequently filed a motion to modify his sentences, which the circuit court denied. Maddox then filed a direct appeal, and we affirmed the judgment of conviction and the postconviction order. *See* ***State v. Maddox***, No. 2000AP1240-CR, unpublished slip op. (WI App July 20, 2001). His petition for review was denied.

¶3 In September of 2006, Maddox, *pro se*, filed a WIS. STAT. § 974.06 motion seeking plea withdrawal. Maddox argued that he was not fully aware of the elements and nature of the offenses and that his trial and postconviction lawyers were ineffective. The circuit court denied the motion, and this court affirmed. *See* ***State v. Maddox***, No. 2007AP218, unpublished slip op. (WI App Dec. 27, 2007). His petition for review was denied.

¶4 In June of 2011, Maddox, *pro se*, filed the WIS. STAT. § 974.06 motion underlying this appeal. He argued that his postconviction lawyer was ineffective for failing to argue that his trial lawyer was ineffective on the following bases: (1) for withdrawing Maddox's defense that he was not responsible by reason of "mental disease or defect" under WIS. STAT. § 971.15(1) without having Maddox fully examined by a psychiatrist, who would have uncovered Maddox's true mental illness and consequently, afforded him a viable defense; (2) for disregarding Maddox's desire to withdraw his guilty pleas prior to sentencing; and (3) for failing to visit the crime scene, review police reports, or

question witnesses. The circuit court denied Maddox's motion after concluding that the issues he raised were procedurally barred.

ANALYSIS

¶5 WISCONSIN STAT. § 974.06 "does not … create an unlimited right to file successive motions for relief." ***State ex rel. Dismuke v. Kolb***, 149 Wis. 2d 270, 273, 441 N.W.2d 253, 254 (Ct. App. 1989). In ***Escalona-Naranjo***, 185 Wis. 2d at 177, 517 N.W.2d at 160, our supreme court explained that § 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion, thereby cutting off successive frivolous motions. If a defendant's grounds for relief have been finally adjudicated, waived or not raised in a prior postconviction motion, they may not become the basis for a § 974.06 motion unless the circuit court ascertains that a sufficient reason exists for the failure to allege or adequately raise the issue earlier. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181–182, 517 N.W.2d at 162. The procedural bar exists because of the need for finality in litigation. ***Id.***, 185 Wis. 2d at 185, 517 N.W.2d at 163. Whether claims in a § 974.06 motion are barred is a question of law we review *de novo*. *See* ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175, 176 (Ct. App. 1997).

¶6 As set forth above, Maddox previously pursued both a direct appeal and an appeal following the denial of his first *pro se* WIS. STAT. § 974.06 motion. Consequently, in an effort to avoid ***Escalona-Naranjo***'s procedural bar, Maddox asserts that newly discovered evidence shows that had he been properly examined by a psychiatrist at the time of his plea, the examination would have shown that Maddox was mentally ill. To support his assertion, he relies primarily on DOC psychiatric reports reflecting that he was clinically diagnosed with a

schizoaffective disorder. The earliest psychiatric report Maddox submits was prepared in 2001, shortly after his direct appeal was resolved; however, this and at least one other psychiatric report Maddox relies upon were prepared in advance of the first WIS. STAT. § 974.06 motion he filed. As such, even if we were to conclude that these documents satisfy the newly discovered evidence standard, Maddox has not demonstrated a sufficient reason for failing to raise the claims he now asserts in that motion.[1]

¶7 In this regard, Maddox submits:

> [His] very low IQ, the heavy medications, the mental disease, the lack of any real education, are all sufficient reasons as to why Maddox didn't raise his present claims. In order for Maddox to raise such claims he'd have to know that they are claims. He'd have to know that his trial attorney and post[]conviction and appellate attorneys were required to raise these issues in the direct appeal.

Unfortunately for Maddox, ignorance of the law is not a sufficient excuse to challenge a judgment of conviction a third time. If it were, the procedural bar of ***Escalona-Naranjo*** and WIS. STAT. § 974.06(4) would be eviscerated, as many if not most collateral challenges are raised by *pro se* litigants.

¶8 To the extent that Maddox is claiming that his postconviction lawyer was ineffective for not pursuing his trial lawyer's ineffectiveness and that this

[1] We note in passing that Maddox's trial lawyer requested competency examinations of Maddox on two separate occasions. Various psychiatric evaluations were submitted, including one that followed a period of observation of Maddox at the Mendota Mental Health Institute. Two separate doctors concluded that Maddox was competent to proceed. While the reports filed in support of Maddox's motion reflect that he has received diagnoses for mental health disorders since his conviction, a diagnosis of mental illness is not a categorical reason to doubt competency. *See* ***State v. Farrell***, 226 Wis. 2d 447, 454–55, 595 N.W.2d 64, 67–68 (Ct. App. 1999).

constitutes a sufficient reason for his delayed litigation pursuant to ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 556 N.W.2d 136 (Ct. App. 1996), this argument also fails. Under ***Rothering***, the ineffective assistance of a defendant's postconviction lawyer can be a sufficient reason for permitting an additional motion pursuant to WIS. STAT. § 974.06. ***Rothering***, 205 Wis. 2d at 682, 556 N.W.2d at 140. This holding does not, however, extend to an unlimited number of successive postconviction motions. While Maddox might have been able to argue that ***Rothering*** justified raising the instant issues in his first § 974.06 postconviction motion, it cannot be used to justify yet another collateral attack.

¶9 Because we have resolved Maddox's case on procedural grounds, we do not reach the merits of his claims.

By the Court.—Order affirmed.

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