



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 18, 2019

To:

Hon. Michael P. Maxwell
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

Jacob J. Wittwer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Paul A. Adams, #121220
Chippewa Valley Correctional Treatment
Facility
2909 E. Park Ave.
Chippewa Falls, WI 54729

You are hereby notified that the Court has entered the following opinion and order:

2018AP2248

State of Wisconsin v. Paul A. Adams (L.C. #2008CF992)

Before Neubauer, C.J., Reilly, P.J., and Davis, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Paul A. Adams, pro se, appeals from an order denying his postconviction motion for resentencing on the ground that he was denied his right to counsel when his attorney was absent for a portion of his sentencing hearing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT.

RULE 809.21 (2017-18).¹ As Adams' argument is procedurally barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), we affirm.

This is Adams' third appeal arising from his 2009 conviction for operating a vehicle while intoxicated (OWI), fifth offense. See *State v. Adams*, Nos. 2017AP1190-CR and 2017AP1191-CR, unpublished op. and order (WI App Oct. 3, 2018); *State v. Adams*, No. 2016AP1666, unpublished op. and order (WI App Mar. 14, 2018). Adams was convicted after video surveillance caught him driving drunk to a store and stealing a bottle of vodka. *Adams*, No. 2016AP1666, at 2. Adams' prior postconviction motions sought withdrawal of his no contest plea and additional sentence credit, respectively.

The subject of this appeal is Adams' October 2018 motion for resentencing, alleging that he was denied his right to counsel at a critical stage in his criminal proceeding as his attorney was absent during a portion of his 2009 sentencing hearing. At the sentencing hearing, Adams' attorney was present and spoke to the court about the sentencing factors as they applied to Adams, acknowledged Adams' addiction and desire to get treatment, and sought leniency. Adams also made a statement and provided a "packet of information" to the sentencing court, which the court then took a short recess to review. At that time, Adams' attorney requested that he be allowed to "run down" to another court "for a status and come back." When the hearing resumed, Adams' attorney had not returned and the court proceeded with imposing Adams' sentence.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Adams subsequently filed this postconviction motion, which the circuit court construed as a motion for sentence modification based on a new factor. The circuit court denied the motion, concluding that Adams' attorney's absence was not a new factor, he could not show prejudice as a result of his absence, and his claim was procedurally barred.

Adams renews his argument that he is entitled to resentencing on appeal. He claims that prejudice should be presumed as a result of his attorney's absence at a portion of the sentencing hearing because sentencing is a critical stage of a criminal proceeding. *See United States v. Cronin*, 466 U.S. 648, 659 (1984); *State v. Strickland*, 27 Wis. 2d 623, 635, 135 N.W.2d 295 (1965). Adams raises this issue for the first time in a successive postconviction motion; therefore, he must first overcome the *Escalona-Naranjo* procedural bar for successive motions. *See* WIS. STAT. § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 178, 185. *Escalona-Naranjo* holds that an issue that could have been raised in a prior appeal or in a postconviction motion cannot form the basis for a subsequent postconviction motion under § 974.06, unless the defendant presents a sufficient reason for failing to raise the issue earlier. *Escalona-Naranjo*, 185 Wis. 2d at 185. Whether a defendant is procedurally barred is a question of law we review de novo. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Adams recognizes that his claim is subject to the *Escalona-Naranjo* procedural bar, but he argues he has sufficient reasons for not bringing the claim previously. Adams' main argument is that he was unaware of the legal basis for his claim until "he overheard some inmate talking in the law library about what a critical stage is. Thereafter, [he] recalled [his attorney] abandoning him during his sentencing." Late recognition of a legal claim is not a sufficient reason under WIS. STAT. § 974.06 unless the claim stems from a subsequent court decision announcing a "new rule of substantive law." *State v. Allen*, 2010 WI 89, ¶44, 328 Wis. 2d 1,

786 N.W.2d 124. The legal basis for Adams' claim existed well before his first postconviction motion, and, therefore, Adams' lack of knowledge regarding the claim is not a sufficient reason under *Escalona-Naranjo*.

Adams makes several additional arguments that we address below. First, he argues that the court and his attorney did not advise him of his right to appeal. Not only does Adams not explain how this prohibited him from addressing this issue in a previous motion, but the record indicates he was advised of his right to appeal several times. Next, Adams argues that he "was never provided" the records or transcript in his case, but the record suggests he did not request the documents until years later. Also, Adams claims that the inmate who "wrote the arguments" after speaking with Adams failed to raise the current claim in his first motion, which is basically a claim of ineffective assistance of a "jailhouse lawyer." There is no legal basis for this claim. And finally, Adams argues that he has numerous physical and mental health issues. While we are sensitive to Adams' struggles, he provides no explanation of how his health problems prevented him from raising this issue in a prior motion. Therefore, we conclude that Adams has not established a sufficient reason for his failure to raise this issue previously, and his motion is procedurally barred by *Escalona-Naranjo*.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals