

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 10, 2007

David R. Schanker
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. 2005AP2727

Cir. Ct. No. 1997CF972838

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PERK EUGENE THOMAS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
ELSA C. LAMELAS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Perk Eugene Thomas, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 (2005–06)¹ postconviction motion. The circuit court denied the motion as procedurally barred under *State v. Escalona–Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree with the circuit court, and affirm.

¶2 Thomas pled guilty to first–degree intentional homicide of his wife, Sheila Thomas. In his direct appeal under WIS. STAT. RULE 809.30, Thomas sought to withdraw his guilty plea based on ineffective assistance of trial counsel. The circuit court denied Thomas’s postconviction motion. We affirmed. *State v. Thomas*, No. 1999AP0059–CR, unpublished slip op. (Wis. Ct. App. May 16, 2000). The supreme court denied Thomas’s petition for review.

¶3 On August 10, 2001, Thomas filed his first WIS. STAT. § 974.06 postconviction motion. In that motion, Thomas claimed that his statement to police was not voluntary and that an investigating detective knowingly made false statements. The circuit court denied Thomas’s motion as barred by *Escalona–Naranjo*. This court affirmed. *State v. Thomas*, No. 2001AP2295, unpublished slip op. (WI App Feb. 7, 2003). The supreme court denied Thomas’s petition for review.

¶4 Thomas filed a second postconviction motion in 2004. In its order denying the motion, the circuit court stated that Thomas was raising the same

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

issues that he raised in the 2001 postconviction motion.² Thomas did not appeal this order.

¶5 On May 12, 2005, Thomas filed a motion for a new trial alleging “plain error” under WIS. STAT. § 901.03(4). In his latest motion, Thomas sought to withdraw his guilty plea, again based on the claimed ineffective assistance of trial counsel. In his motion, Thomas faults his trial attorney for not requesting a competency examination. *See* WIS. STAT. § 971.14. Thomas further claims it was “plain error” for the circuit court to accept his guilty plea because there was reason to doubt his competency. The circuit court denied Thomas’s motion as barred by *Escalona–Naranjo*. Thomas now appeals from the circuit court’s order.

¶6 A defendant cannot raise an argument in a second postconviction motion that was not raised in a prior postconviction motion unless there is a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Escalona–Naranjo*, 185 Wis. 2d at 181–182, 517 N.W.2d at 162. A defendant must “raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion.” *Id.*, 185 Wis. 2d at 185, 517 N.W.2d at 163–164; *see also* WIS. STAT. § 974.06(4) (“Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived ... in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion,” absent sufficient reason.).

[A] criminal defendant [is] required to consolidate all postconviction claims into his or her original, supplemental, or amended motion. If a criminal defendant fails to raise a constitutional issue that could have been raised on direct appeal or in a prior § 974.06 motion, the

² The circuit court’s order is in the Record. Thomas’s motion is not.

constitutional issue may not become the basis for a subsequent § 974.06 motion unless the court ascertains that a sufficient reason exists for the failure either to allege or to adequately raise the issue in the appeal or previous § 974.06 motion.

State v. Lo, 2003 WI 107, ¶31, 264 Wis. 2d 1, 16, 665 N.W.2d 756, 763 (citations omitted).

¶7 “[D]ue process for a convicted defendant permits him or her a single appeal of [a] conviction and a single opportunity to raise claims of error” *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84, 86 (Ct. App. 1998). Thomas has already had more than that single opportunity—in his WIS. STAT. RULE 809.30 appeal and in previous WIS. STAT. § 974.06 motions. Thomas offers no sufficient reason, and we can discern none from the Record, why the issue he now raises in his third postconviction motion was not raised previously.³ Thomas is procedurally barred from attempting to raise an additional claim in his latest motion. As the supreme court stated in *Escalona-Naranjo*, 185 Wis. 2d at 185, 517 N.W.2d at 163, “[w]e need finality in our litigation.”

By the Court.—Order affirmed.

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

³ Thomas asserts that postconviction counsel was ineffective in his WIS. STAT. RULE 809.30 appeal for not challenging the effectiveness of trial counsel on this basis. Although ineffective assistance of postconviction counsel may be “sufficient reason” under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994) for failing to raise an issue previously, *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 681–682, 556 N.W.2d 136, 139 (Ct. App. 1996), a defendant cannot bring multiple postconviction motions. Thomas does not explain why he failed to raise this latest argument in his initial WIS. STAT. § 974.06 motion.

