

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 19, 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. 2006AP222
STATE OF WISCONSIN**

Cir. Ct. No. 2003CF4387

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MATTHEW G. HILL,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. Matthew G. Hill appeals from an order summarily denying his successive postconviction motion. The issue is whether Hill is entitled to maintain a successive postconviction motion, pursuant to WIS. STAT. § 974.06, principally renewing issues previously raised inadequately and raising

new albeit related issues, without alleging a sufficient reason for his failure to adequately raise these issues previously. We conclude that Hill is barred from re-raising these issues without alleging a sufficient reason for failing to previously raise these issues adequately, and that those issues or variations of related issues, which have been decided, cannot be renewed in a successive postconviction motion. Therefore, we affirm.

¶2 Hill pled guilty to second-degree recklessly endangering safety, in violation of WIS. STAT. § 941.30(2) (2003-04), and for the theft of movable property, in violation of WIS. STAT. § 943.20(1)(a) (2003-04). For the reckless endangerment, the trial court imposed an eight-year sentence comprised of two four-year periods of initial confinement and extended supervision; for the theft, the trial court imposed a four-year concurrent sentence comprised of two two-year periods of initial confinement and extended supervision. These sentences were imposed to run concurrent to each other, but consecutive to any other sentence. Hill did not appeal.

¶3 Approximately one year later, Hill moved for postconviction relief pursuant to WIS. STAT. § 974.06, alleging the ineffective assistance of trial counsel in several respects, one of which was counsel's alleged failure to protect Hill's due process right to be sentenced on accurate information. Hill alleged that he was not given the presentence investigation report until the sentencing hearing, and consequently, he did not have the time to advise trial counsel of the report's inaccuracies.

¶4 The trial court summarily denied the motion, explaining that Hill
d[id] not provide the court with any specifics as to how he
was sentenced on inaccurate information. A defendant
contending that he was sentenced on the basis of inaccurate

information must establish that the information was in fact inaccurate and that the trial court relied on the inaccurate information. Defendant has not provided the court with any information pertaining to this claim.

(Citation and footnote omitted.)

¶5 On appeal, this court affirmed the trial court's order. *State v. Hill*, No. 2004AP2984, unpublished slip op. at 1 (WI App Nov. 3, 2005) ("*Hill I*"). First, we set forth the law regarding a defendant's due process right to be sentenced on accurate information, and then explained the specificity the law requires to establish a sufficient claim to warrant an evidentiary hearing, and the proper exercise of discretion required to summarily deny an insufficient or invalid postconviction claim. Second, we specifically explained why we concluded that Hill's motion was insufficient to warrant an evidentiary hearing.

Hill's motion does not state what was inaccurate in his PSI [presentence investigation report] or present any facts to support his claim that the PSI contained inaccurate information. In addition, Hill does not allege any specific facts showing that the [trial] court relied on those inaccuracies in the PSI when sentencing. We conclude that Hill has not alleged facts that, if true, would entitle him to relief. Therefore, the [trial] court was not required to hold an evidentiary hearing.

Id., unpublished slip op. at 3. Third, we demonstrated why the trial court properly exercised its discretion in summarily denying Hill's postconviction motion. *See id.*

¶6 Approximately six weeks after we decided *Hill I*, Hill filed a second postconviction motion, alleging that trial counsel's ineffectiveness deprived him of his due process right to be sentenced on accurate information.¹ He alleged no

¹ Hill alleged variations of this and related issues.

reason for failing to previously raise these issues, simply alleging that they were “inadequately raised in the original motion.” (Emphasis in original.) The trial court summarily denied this second motion as barred by *State v. Walberg*, 109 Wis. 2d 96, 103, 325 N.W.2d 687 (1982) (WISCONSIN STAT. § 974.06 “must not be used to raise issues disposed of by a previous appeal”), and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994) (defendant required to consolidate all postconviction claims into one motion or appeal).

¶7 Hill appeals, claiming that the plain language of WIS. STAT. § 974.06(4) does not require a sufficient reason simply to renew an issue that was inadequately raised. We disagree.

¶8 “[S]tatutory interpretation begins with the language of the statute. If the meaning of the statute is plain, we ordinarily stop the inquiry.” *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. WISCONSIN STAT. § 974.06(4) states:

All grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the person has taken to secure relief may not be the basis for a subsequent motion, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended motion.

Id. (emphasis added).

¶9 A defendant seeking postconviction relief pursuant to WIS. STAT. § 974.06 must raise all grounds for relief in his or her original (first) motion. If previously, the issue has been “finally adjudicated,” not raised, or inadequately

raised, the plain language of § 974.06(4) directs the defendant to assert a “sufficient reason” for raising the issue in a subsequent motion. Hill contends that the “sufficient reason” requisite does not apply to issues that were “inadequately raised” in the original motion because the word “or” separates the “sufficient reason” and “inadequately raised” clauses. We disagree. Both plain language and common sense require the “sufficient reason” requisite to apply to the defendant’s failure to raise, or to adequately raise an issue, as also supported by the policy objective of the requisite “sufficient reason,” namely to require the defendant to consolidate his or her challenges into a single postconviction motion, absent a “sufficient reason” for failing to do so. *See, e.g.*, § 974.06(4); *State v. Lo*, 2003 WI 107, ¶18, 264 Wis. 2d 1, 665 N.W.2d 756 (“[Section 974.06(4) is] designed to compel a prisoner to raise all questions available to him in one motion”) (citation omitted); *State ex rel. Macemon v. Christie*, 216 Wis. 2d 337, 343, 576 N.W.2d 84 (Ct. App. 1998) (Section 974.06(4) requires all postconviction challenges to be raised in a single motion to avoid wasting judicial resources); *Escalona*, 185 Wis. 2d at 185. Moreover, insofar as some of these issues were “finally adjudicated,” Hill is also barred from renewing them. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991) (we will not revisit previously rejected issues).

By the Court.—Order affirmed.

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

