

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 14, 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. 2006AP355

STATE OF WISCONSIN

Cir. Ct. Nos. 1991CF912790
1992CF920339

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

HOWARD FRANK WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
CHARLES F. KAHN, JR., Judge. *Affirmed.*

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

¶1 PER CURIAM. Howard Frank Williams appeals from an order denying his petition for a writ of habeas corpus, and from a related order denying his “alternative motion to vacate judgment” and his motion for reconsideration. Williams raises thirteen issues, which he phrases most cogently as whether an

unrepresented litigant can “ensnar[e himself] by his own errors and thus forfeit [his] right[s].” We conclude that Williams’s current petition and motions are procedurally barred for his failure to timely allege a sufficient reason for failing to raise issues that could have been previously litigated, or by renewing issues that were previously litigated. Therefore, we affirm.

¶2 In 1992, Williams was convicted of felony murder and two counts of armed robbery. The trial court imposed a fifty-year aggregate sentence. Williams filed correspondence from his appointed postconviction counsel explaining that, in her opinion, challenging his judgments of conviction would lack arguable merit. She then, in explicit detail, explained his four options and the ramifications of each. He could: (1) do nothing; (2) retain private counsel; (3) proceed *pro se*; or (4) agree to her filing a no-merit report. Incident to her explanation, she addressed every stage of a no-merit appeal, explaining the possibilities of what may occur, and the ramifications of each possibility. She then recounted that initially Williams was contemplating a no-merit appeal, but “later said [Williams] would not want [her] to file a No Merit Report.” She concluded by telling him that she would be closing her file in his case, but that he should “write [her] immediately,” if he did not understand her three-page, single-spaced correspondence, or disagreed with her explanations. Williams seemingly chose the first option; he did not pursue a direct appeal, no-merit or otherwise.

¶3 In 1993, Williams filed several *pro se* postconviction motions, with the admitted help of his “jailhouse lawyer,” alleging the ineffective assistance of trial counsel, among other things. The trial court denied the motions. On appeal, we explained that no postconviction or appellate relief was pursued by appointed counsel because Williams disagreed with her assessment of his case. See *State v. Williams*, Nos. 92-2340 and 93-2341, unpublished slip op. at 4-5 (Wis. Ct. App.

Aug. 16, 1994). We further denied his ineffective assistance claims. *See id.* at 7-10.

¶4 In 1997, Williams filed a petition for a writ of habeas corpus, alleging the ineffective assistance of appellate counsel. The trial court denied the motion. Williams did not appeal.

¶5 In 2005, Williams filed a second petition for a writ of habeas corpus, alleging the ineffective assistance of appellate counsel for failing to file a no-merit report, and for failing to obtain permission from the trial court to withdraw from representation. The trial court denied the motion as procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Williams filed an alternative motion to vacate the judgment and a motion for reconsideration, which the trial court also denied. Williams appeals from these orders.

¶6 On appeal, Williams raises thirteen issues, essentially asking whether a defendant “can[] be ensnar[]ed by his own errors and thus forfeit the right to the court ...?” His principal challenge centers on appellate counsel’s closing his file without pursuing a direct (no-merit) appeal, and withdrawing from representation without his permission or that of the court since there was no formal order granting a withdrawal motion, or an on-the-record colloquy demonstrating that he validly waived his right to postconviction/appellate counsel. He also challenges the trial court’s previous rulings that he failed to appeal, that he was competent to proceed *pro se*, and on the basis of the *Escalona* holding and its “sufficient reason” requisite; he also seeks reinstatement of his direct appeal rights on any of these bases, or in the interest of justice.

¶7 We addressed the issue of appellate counsel’s withdrawal and his choice to proceed *pro se*; we will not revisit previously rejected issues. *See State*

v. Witkowski, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). Insofar as there are aspects of this issue we did not address, Williams alleges no reason why he did not raise them previously.¹ Thus, they are procedurally barred. *See Escalona*, 185 Wis. 2d at 185-86.

¶8 Williams litigated his competence in previous proceedings. *See Williams*, Nos. 92-2340 and 93-2341, unpublished slip op. at 6-7. Although he challenged his competence to plead guilty, as opposed to his competence to proceed *pro se*, he has not alleged a reason for failing to raise that issue when he litigated his competence, albeit in a different context, and his trial and appellate counsels' effectiveness. Consequently, that issue is also procedurally barred by *Escalona*. *See Escalona*, 185 Wis. 2d at 185-86.

¶9 Williams also challenges *Escalona* and its applicability to his judgment, which was entered before *Escalona* was decided. “We are bound by decisions of the supreme court.” *Ottinger v. Pinel*, 215 Wis. 2d 266, 278, 572 N.W.2d 519 (Ct. App. 1997), *abrogated on other grounds by Bicknese v. Sutula*, 2003 WI 31, 260 Wis. 2d 713, 660 N.W.2d 289. Consequently, any challenge to *Escalona* must be pursued in and presented to the Wisconsin Supreme Court.²

¶10 For the foregoing reasons, the interest of justice does not warrant reinstatement of William's appellate rights that he discarded over a decade ago

¹ To avoid the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994), a movant must allege a sufficient reason for failing to raise all postconviction challenges on direct appeal or in defendant's original, supplemental or amended postconviction motion.

² The Wisconsin Supreme Court rejected another litigant's request that it overrule *Escalona* in *State v. Lo*, 2003 WI 107, ¶¶2, 4, 264 Wis. 2d 1, 665 N.W.2d 756. *Lo* extensively explained why it reaffirmed *Escalona* and its principles. *See Lo*, 264 Wis. 2d 1.

when he disagreed with appointed counsel's assessment of his case, and proceeded *pro se* rather than allowing the filing of a no-merit appeal. He failed to appeal from a postconviction order, and offered no reason in his current petition why he did not raise these issues previously.³ His previous ineffective assistance claims have failed, and he now seeks to blame his failed *pro se* pursuits on counsel whom he discarded and the trial court, which he has largely ignored. As he feared, he has "be[en] ensnar[ed] by his own errors." The interest of justice does not warrant further litigation. Any reasons alleged in his alternative and reconsideration motions do not excuse his prior and repeated failures.⁴

By the Court.—Orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

³ Williams, regardless of his *pro se* status, did not appeal from the trial court's order. See WIS. STAT. § 808.04 (1997-98). Consequently, those rulings became the law of the case.

⁴ WISCONSIN STAT. § 974.06(4) (2005-06) requires the reason to be alleged in the postconviction motion (or here, in the habeas corpus petition), not thereafter, such as on reconsideration or appeal. See *State ex rel. Schmidt v. Cooke*, 180 Wis. 2d 187, 189-90, 509 N.W.2d 96 (Ct. App. 1993) (a petitioner is limited to a single habeas corpus petition alleging the ineffectiveness of appellate counsel absent a sufficient reason for failing to raise the current challenge previously).

