

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 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. 2006AP1993-CR
STATE OF WISCONSIN**

Cir. Ct. No. 1998CF5276

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JAMES B. WILLIAMS,

DEFENDANT-APPELLANT.

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

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

¶1 PER CURIAM. James B. Williams, *pro se*, appeals from an order denying his WIS. STAT. § 973.13 (2005-06)¹ motion seeking to correct an erroneous sentence. Williams claims that the trial court erred in denying the

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

motion on the basis that it was procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Because we conclude that the trial court did not err when it denied his motion, we affirm.

BACKGROUND

¶2 In 1998, Williams was convicted by a jury of one count of first-degree sexual assault of a child and one count of child enticement. He was sentenced to forty years in prison on the sexual assault count and twenty years in prison for the child enticement count. The child enticement count was consecutive to the sexual assault sentence, but was stayed with an imposed ten-year probation term. Williams appealed the sentence, arguing that the sexual assault sentence was excessive and based on inaccurate information. The trial court granted the motion, vacated the sentences on both counts and ordered the case transferred for resentencing.

¶3 At the resentencing, the trial court imposed a twenty-seven-year prison sentence on the sexual assault count and ten years in prison on the child enticement count, to be served consecutively. Judgment was entered. Williams appealed his judgment to the court of appeals, but did not raise any issues related to the sentence. We affirmed the judgment. *See State v. Williams*, No. 99-3307-CR, unpublished slip op. (WI App Mar. 13, 2001).

¶4 In 2002, Williams filed a *pro se* WIS. STAT. § 974.06 (2001-02) motion, which was denied by the trial court in September 2002. He appealed from the order denying his postconviction motion. We affirmed the order of the circuit court. *See State v. Williams*, No. 02-2777, unpublished slip op. (WI App Sept. 3, 2003).

¶5 In 2005, Williams filed another *pro se* WIS. STAT. § 974.06 motion, which the trial court denied on the basis that it was procedurally barred by *Escalona-Naranjo*. Williams did not appeal that order to this court. Finally, in 2006, Williams filed a *pro se* motion, this time under WIS. STAT. § 973.13, requesting that his sentence be corrected. The trial court denied the motion on the basis that it was procedurally barred. An order was entered. Williams now appeals from that order.

DISCUSSION

¶6 Williams claims that the trial court erred in denying his motion to correct an erroneous sentence. He claims that his sentence was illegal because it unconstitutionally increased his originally-imposed term of *probation* to ten years *in prison*. We decline to address the merits of his claim because Williams's claim is procedurally barred by *Escalona-Naranjo*.

¶7 Defendants are not permitted to pursue an endless succession of postconviction remedies:

We need finality in our litigation. Section 974.06(4) compels a prisoner to raise all grounds regarding postconviction relief in his or her original, supplemental or amended motion. Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Escalona-Naranjo, 185 Wis. 2d at 185. Thus, claims which were raised previously, or could have been, but were not raised in a prior postconviction motion or on direct appeal, are procedurally barred unless a sufficient reason for failing to raise the issue is presented. *Id.* “[D]ue process for a convicted defendant permits him or her a single appeal of that 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 (Ct. App. 1998).

¶8 As set forth above, Williams failed to raise the sentencing issues in his direct appeal. Moreover, he failed to raise this specific sentencing issue in his *pro se* WIS. STAT. § 974.06 motion. Williams certainly could have and should have raised the issue he raises now either during his direct appeal or during his first § 974.06 motion/appeal. Because he failed to do so in either his first or second appeal, his sentencing claims are procedurally barred.

¶9 Moreover, Williams fails to provide this court with a sufficient reason to overcome the procedural bar. Williams does briefly allege that his postconviction counsel’s ineffective assistance should constitute a sufficient reason for failing to raise this issue. We are not convinced as Williams fails to adequately brief such argument, and fails to reply to the State’s response that his argument is insufficient to overcome the procedural bar. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). Accordingly, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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