

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 2015

Diane M. Fremgen
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. 2014AP1937

Cir. Ct. No. 2007CF62

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRYL WAYNE PRUETT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Trempealeau County:
JOHN A. DAMON, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Darryl Pruett appeals an order denying his WIS. STAT. § 974.06 (2013-14)¹ motion to withdraw his guilty pleas to sexual assault of

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

a child and repeated sexual assault of the same child.² He argues: (1) the circuit court judge should have recused himself because of bias; (2) his trial counsel was ineffective for failing to present a defense of not guilty by reason of mental disease or defect (NGI); and (3) Pruett established sufficient reason to allow him to raise the ineffective assistance of counsel claim despite the procedural bar set forth in *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). We reject these arguments and affirm the order.

BACKGROUND

¶2 After a competency evaluation determined that Pruett was competent to assist in his own defense, Pruett entered guilty pleas to both counts in exchange for the State's agreement to cap its sentence recommendation at five years' initial confinement and five years' extended supervision on count one, and a consecutive term of ten years' probation on count two. The court ordered a presentence investigation report as well as an independent psychological examination and an alternate presentence report. On December 2, 2008, the court imposed sentences totaling nine years' initial confinement and four years' extended supervision.

¶3 Pruett then filed a postconviction motion pursuant to WIS. STAT. RULE 809.30 claiming ineffective assistance of trial counsel based in part on counsel's failure to pursue an NGI defense. The court denied the motion and this court affirmed the judgment and order, specifically rejecting Pruett's argument that counsel was ineffective for failing to evaluate or pursue an NGI defense. This

² The notice of appeal also purports to appeal the 2008 judgment of conviction. Because this is not an appeal under WIS. STAT. RULE 809.30 and Pruett has previously appealed the judgment of conviction, this court has no jurisdiction to directly review the judgment. Our jurisdiction is limited to a review of the order denying the WIS. STAT. § 974.06 motion.

court specifically considered the evaluation conducted by Dr. Patricia Stanik, the evaluation upon which Pruett's current motion relies.

DISCUSSION

¶4 Whether a defendant's claims are procedurally barred by application of *Escalona-Naranjo* is a question of law that we review de novo. *State v. Toelfree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). Unless a defendant establishes sufficient reason for not raising an issue in a previous postconviction motion, *Escalona-Naranjo* prohibits successive postconviction motions, and applies to issues previously raised or that could have been raised in the earlier proceedings. *State v. Evans*, 2004 WI 84, ¶33, 273 Wis. 2d 192, 682 N.W.2d 784. An issue previously decided on appeal cannot be relitigated no matter how artfully it is rephrased. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

¶5 Even if Pruett could establish bias by the circuit judge, he would not defeat the procedural bar against successive postconviction motions. This court independently determines whether he established sufficient reason to entertain a second postconviction proceeding. *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Therefore, Pruett's argument regarding judicial bias needs not be addressed.

¶6 Pruett's claim of ineffective assistance of counsel is procedurally barred by his previous postconviction motion and appeal. Pruett's current motion does not establish sufficient reason for allowing a second postconviction proceeding concerning ineffective assistance of counsel, and the present motion heavily relies on Dr. Stanik's evaluation which was specifically considered in his earlier appeal.

By the Court.—Order affirmed.

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

