COURT OF APPEALS
DECISION
DATED AND FILED

March 8, 2007

A. John Voelker
Acting 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. 2006AP2094 **Cir. Ct. No. 2006CV575**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN EX REL. ANDREW MATTHEW OBRIECHT,

PETITIONER-APPELLANT,

V.

BYRAN BARTOW,

RESPONDENT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: RICHARD G. NIESS, Judge. *Affirmed*.

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Andrew Obriecht appeals an order denying his petition for habeas corpus relief from criminal convictions. The petition alleged that trial counsel performed ineffectively, as did postconviction counsel by failing to raise the issue of trial counsel's performance. This is the most recent of many

postconviction motions, petitions, and appeals Obriecht has filed. This is the second habeas proceeding in which he has litigated claims of ineffective representation. The issues raised in this petition have either been raised and decided in that previous proceeding, or Obriecht has failed to adequately show why they could not have been raised earlier. We therefore affirm.

¶2 A postconviction petition for writ of habeas corpus will not be granted where the petitioner asserts a claim he or she litigated in a previous postconviction proceeding. ***State v. Pozo***, 2002 WI App 279, ¶9, 258 Wis. 2d 796, 654 N.W.2d 12. In the prior habeas proceeding, Obriecht litigated the two principal claims of ineffectiveness he raised again here: that trial counsel did not adequately investigate potential witnesses and that appellate counsel unreasonably refused to raise trial counsel's ineffectiveness in a postconviction proceeding. These claims are therefore barred as previously litigated.

¶3 Claims the petitioner could have raised in a prior proceeding, but did not, are also barred unless the petitioner offers a valid reason for not raising them earlier. ***Id.*** For Obriecht's newly raised allegations about his attorneys' performance, his only explanation for not raising those claims earlier is the fact that the trial court denied him a hearing in the earlier habeas proceeding. However, a hearing was not necessary to raise claims of ineffectiveness or preserve them for appeal. He could have sufficiently raised them in his petition, as he did with the claims that were in fact litigated, but did not and does not explain why. He has therefore failed to provide a valid reason to allow him to litigate the merits of claims newly presented in this proceeding. Those claims are now barred as well.

By the Court.—Order affirmed

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