

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 28, 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. 2006AP1696

Cir. Ct. No. 2001CF4831

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE G. SANTIAGO,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
TIMOTHY G. DUGAN, Judge. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Jose G. Santiago appeals from the order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2005-06).¹ He argues that the circuit court erred when it denied his motion without holding an evidentiary hearing. Because we conclude that his appellate arguments are procedurally barred, we affirm the order of the circuit court.

¶2 Santiago pled no contest to first-degree reckless homicide. Before sentencing, Santiago moved to withdraw his plea alleging that he did not understand the plea and it had been coerced. The circuit court held a hearing on the motion, and found that Santiago had clearly expressed his understanding of the plea during the plea colloquy. The court denied the motion. The court sentenced him to thirty-five years of initial confinement and fifteen years of extended supervision. Santiago appealed.

¶3 Santiago's appointed counsel filed a no-merit under *Anders v. California*, 386 U.S. 738 (1967), and WIS. STAT. RULE 809.32, and Santiago filed a response to that report. This court affirmed. Santiago then filed, *pro se*, a motion for postconviction relief under WIS. STAT. § 974.06, arguing that he had received ineffective assistance of postconviction counsel, and that the State had breached the plea agreement. The circuit court denied the motion. Santiago filed a notice of appeal but did not pursue that appeal, and it was dismissed.

¶4 Santiago then filed the motion for postconviction relief that is the subject of this appeal. In this motion, Santiago alleged that his trial counsel coerced his plea and was ineffective in arguing his plea withdrawal motion. He

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

also argued that his postconviction counsel was ineffective for failing to request an evidentiary hearing. The circuit court denied the motion, finding that the motion was barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994) and *State v. Tillman*, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. We agree with the circuit court.

¶5 In *Escalona-Naranjo*, 185 Wis. 2d at 185, the supreme court stated:

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, all of which could have been brought at the same time, run counter to the design and purpose of the legislation.

A defendant must raise all grounds for relief in his or her original, supplemental, or amended motion for postconviction relief. *Id.* at 181. If a defendant's grounds for relief have been finally adjudicated, waived, or not raised in a prior postconviction motion, they may not become the basis for a new postconviction motion, unless he or she states a sufficient reason for the failure to allege or adequately raise the issue in the original motion. *Id.* at 181-82. In *Tillman*, this court held that

when a defendant's postconviction issues have been addressed by the no merit procedure under WIS. STAT. RULE 809.32, the defendant may not thereafter again raise those issues or other issues that could have been raised in the previous motion, absent the defendant demonstrating a sufficient reason for failing to raise those issues previously. See *Escalona-Naranjo*, 185 Wis. 2d at 181-82.

Tillman, 281 Wis. 2d 157, ¶19.

¶6 In this case, Santiago argues that his trial counsel coerced him into entering a plea, and that the State threatened him. This court has already addressed the issue of whether his plea was coerced. We concluded that the

record did not support his assertion that he entered the plea unknowingly or involuntarily. Any claims that Santiago raised concerning the validity of the plea have already been raised and decided by this court.

¶7 Santiago also argues that his trial counsel did not make an adequate argument at his motion to withdraw his plea, and that his postconviction counsel was ineffective for failing to raise this issue. Further, he appears to be arguing that his postconviction counsel's ineffectiveness is a sufficient reason for him to have failed to include the present claim in his response to the no-merit report. We reject this argument.

¶8 We concluded when we reviewed the record for his previous appeal that his trial counsel was not ineffective. Santiago had the opportunity to raise the issue he now raises in his response to the no-merit report and did not. Further, he did raise the issue in his previous motion for postconviction relief. That motion was denied and he did not pursue the appeal. Consequently, we conclude that the issues Santiago raises are barred by *Escalona-Naranjo* and *Tillman*. 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.

