

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2010

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. 2008AP1044
STATE OF WISCONSIN**

Cir. Ct. No. 2002CF4580
2007CV13119
**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTOINE D. EDWARDS,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Antoine D. Edwards appeals from an order summarily denying his postconviction motion as procedurally barred. The issues are whether Edwards provided a sufficient reason for us to now consider issues on an allegedly erroneous jury instruction and on the constitutionality of a statute that

he is raising after the conclusion of his direct appeal. We conclude that Edwards's prior decision to proceed *pro se*, without the assistance of a lawyer, and his ignorance of the substantive law of the two issues he now seeks to raise is not a sufficient reason to overcome the procedural bar of *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Therefore, we affirm.

¶2 A jury found Edwards guilty of first-degree reckless homicide while using a dangerous weapon as a party to the crime. The trial court imposed a forty-eight-year sentence, comprised of thirty-two- and sixteen-year respective periods of initial confinement and extended supervision. Edwards moved for a new trial based on newly discovered evidence. The trial court denied the motion. Edwards's postconviction/appellate counsel moved to withdraw. In response to the motion, Edwards confirmed that he sought appellate counsel's withdrawal and that he would proceed *pro se*. The trial court confirmed that the State Public Defender's Office would not appoint successor counsel. The trial court then extensively warned Edwards of the risks of proceeding *pro se*, including but not limited to the applicability and consequences of *Escalona*'s bar. Edwards assured the trial court that he was aware of *Escalona*'s procedural bar. Edwards filed a direct appeal, raising a multitude of issues. We affirmed the judgment of conviction and the postconviction order. *See State v. Edwards*, No. 2004AP3292-CR, unpublished slip op., ¶¶1, 40 (WI App Mar. 14, 2006).

¶3 Edwards then moved for postconviction relief, raising two issues: he challenges the jury instruction on the unanimity of the verdict, and he alleges that his trial counsel was ineffective for failing to challenge the constitutionality of WIS. STAT. § 938.02(10m) (2001-02), regarding the age for which an accused may

be prosecuted as an adult.¹ Being thoroughly warned about the applicability of *Escalona*'s procedural bar, Edwards now explains that he had not previously raised these two issues because the lay persons assisting him did not suggest them, and Edwards "has no understanding of law and did not knowingly fail to present any of the issues raised in this [proceeding]." Neither is a sufficient reason to avoid *Escalona*.

¶4 To avoid *Escalona*'s procedural bar, Edwards must allege a sufficient reason for failing to have previously raised all grounds for postconviction relief on direct appeal or in his original postconviction motion. *See Escalona*, 185 Wis. 2d at 185-86. Whether *Escalona*'s procedural bar applies to a postconviction claim is a question of law entitled to independent review. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶5 Ignorance of the law is not a sufficient excuse to challenge a judgment of conviction a second time. If it were, the procedural bar of *Escalona* and WIS. STAT. § 974.06(4) would be eviscerated, as many if not most collateral challenges are raised by *pro se* litigants. Moreover, Edwards was thoroughly warned about the significant risks of proceeding *pro se*, without appointed counsel.

¶6 Edwards expands upon his reasons for failing to previously raise these issues in his appellate brief, now alleging that the legal authority that underlies his current challenges did not previously exist. Preliminarily, he cites to no new or recent law that post-dates his direct appeal. More importantly, the

¹ All further references to the Wisconsin Statutes are to the 2007-08 version.

“sufficient reason” to overcome the procedural bar must be alleged in the postconviction motion itself to afford the trial court the initial opportunity to evaluate the sufficiency of the movant’s reason. *See* WIS. STAT. § 974.06(4). Although ignorance of important legal issues is not a sufficient reason to overcome *Escalona*’s procedural bar, Edwards cannot claim such ignorance, as confirmed by the trial court’s order and Edwards’s response regarding his postconviction/appellate counsel’s motion to withdraw.

By the Court.—Order affirmed.

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

