

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 7, 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. 2009AP1672-CR

Cir. Ct. No. 2001CF5885

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY GARRISON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
RICHARD J. SANKOVITZ, Judge. *Affirmed.*

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

¶1 PER CURIAM. Anthony Garrison, *pro se*, appeals an order denying his motion to rescind restitution. The circuit court determined Garrison's motion was procedurally barred. We agree and affirm the order.

¶2 In 2002, Garrison pled guilty to one count of conspiracy to misappropriate personal identifying information as a habitual criminal. A charge of misappropriation of personal identifying information—without the conspiracy element—was dismissed and read in. As part of the sentence, Garrison was ordered to pay restitution totaling approximately \$72,245 to companies including Ameritech, Warner Cable, Cellular USA, Dell Computer, and Gateway Computer, to be paid from up to twenty-five percent of Garrison’s prison wages. This amount was, following two motions by Garrison, subsequently amended to approximately \$64,063. The amendment was based on a stipulation signed by the State, defense counsel, and Garrison himself.

¶3 Garrison did not pursue a direct appeal. In September 2006, he filed a *pro se* WIS. STAT. § 974.06 (2007-08)¹ motion alleging that his plea was involuntary. The circuit court denied the motion without a hearing. Garrison appealed and we affirmed. *See State v. Garrison*, No. 2006AP2630, unpublished slip op. (WI App July 17, 2007).

¶4 On June 1, 2009, Garrison filed a “motion to rescind restitution.” He alleged that: (1) the trial court erred when it ordered him to pay restitution to companies rather than the “actual victims” of his crimes; (2) the trial court lacked competency to order restitution; and (3) the court erred when it ordered restitution be paid from Garrison’s prison wages. The court concluded Garrison’s claims were precluded by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because they could have been raised at sentencing, during his motions to

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

reduce restitution, or in his prior WIS. STAT. § 974.06 motion. Accordingly, the court denied the 2009 motion. Garrison appeals.

¶5 Garrison complains the trial court erroneously denied his motion as barred by *Escalona* because it was brought under WIS. STAT. § 806.07(1)(h), not WIS. STAT. § 974.06.² However, § 806.07 applies to civil actions and judgments. *See State ex rel. Lewandowski v. Callaway*, 118 Wis. 2d 165, 172, 346 N.W.2d 457 (1984). Garrison cites no authority to demonstrate that § 806.07 offers a mechanism for relief from a criminal conviction and sentence. It appears that the trial court instead implicitly—and properly—construed Garrison’s motion as a § 974.06 motion.³ This construction, however, still does not permit relief.

¶6 “It is well-settled that a defendant must raise all grounds for relief in his or her original, supplemental or amended motion for postconviction relief.” *State v. Fortier*, 2006 WI App 11, ¶16, 289 Wis. 2d 179, 709 N.W.2d 893; *see also* WIS. STAT. § 974.06 and *Escalona*, 185 Wis. 2d at 181. If grounds alleged in the present motion were not raised in a prior motion, they may not form the basis for the present motion absent a “sufficient reason” for the failure to raise those grounds previously. *Fortier*, 289 Wis. 2d 179, ¶16.

² WISCONSIN STAT. § 806.07(1) provides, in relevant part: “On motion and upon such terms as are just, the court, subject to subs. (2) and (3), may relieve a party or legal representative from a judgment, order or stipulation for the following reasons: (h) Any other reasons justifying relief from the operation of the judgment.”

³ Although a WIS. STAT. § 974.06 motion is generally limited to claims of jurisdictional and constitutional magnitude, *see State ex rel. Panama v. Hepp*, 2008 WI App 146, ¶19, 314 Wis. 2d 112, 758 N.W.2d 806, § 974.06(1) expressly permits a challenge that a sentence “was imposed in violation of the ... laws of this state[.]” Here, Garrison asserts the restitution order failed to comply with WIS. STAT. § 973.20 in at least three ways, one of which he claims impacted the trial court’s jurisdiction, in addition to alleging but not arguing violations of the Fifth and Fourteenth Amendments.

¶7 Garrison's claims relating to restitution could have, and should have, been raised previously. There were at least two successful motions to modify restitution; direct appeal from the conviction and sentence could have been sought, and the claims could have been raised in the *pro se* WIS. STAT. § 974.06 motion that Garrison filed in 2005. Garrison does not offer any reason, much less a sufficient reason, for his failure to previously raise the issues currently presented.⁴

By the Court.—Order affirmed.

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

⁴ We would alternatively reject Garrison's claims of error on their merit, but we decline to substantively analyze the merits at this time.

