COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2189 **Cir. Ct. No. 2002CF4697**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALBERT N. SATCHER,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Albert N. Satcher appeals from a circuit court order denying his motion for postconviction relief brought under WIS. STAT.

§ 974.06 (2009-10).[1] The circuit court determined that the motion was procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and ***State v. Tillman***, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574. We affirm.

BACKGROUND

¶2 In 2002, Satcher pled guilty to first-degree reckless homicide by use of a dangerous weapon. The circuit court imposed a forty-year term of imprisonment. With the assistance of appointed counsel, he filed a postconviction motion challenging trial counsel's effectiveness at sentencing, but the circuit court denied relief. He pursued an appeal to this court, and his appellate counsel filed a no-merit report pursuant to ***Anders v. California***, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32 (2003-04). Satcher filed a response to the no-merit report. Upon review of the record and the submissions from Satcher and his counsel, we concluded that further appellate proceedings would lack arguable merit, and we summarily affirmed. ***State v. Satcher***, No. 2004AP1304-CRNM, unpublished slip op. at 5 (WI App. Dec. 13, 2005) (***Satcher I***).

¶3 In August 2011, Satcher filed the postconviction motion underlying this appeal. He alleged that his trial counsel was ineffective because trial counsel failed to pursue suppression of his confession and of the gun found in his home, and because trial counsel coerced his guilty plea by refusing to bring a suppression motion or pursue other avenues of defense. He sought plea withdrawal. The

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

circuit court concluded that Satcher's claims were barred and denied relief. He appeals.

DISCUSSION

> ¶4 We need finality in our litigation. [WISCONSIN STAT. §] 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, which all could have been brought at the same time, run counter to the design and purpose of the legislation.

Escalona-Naranjo, 185 Wis. 2d at 185. Therefore, a prisoner who wishes to pursue a second or subsequent postconviction motion under § 974.06 must demonstrate a sufficient reason for failing in the original postconviction proceeding to raise or adequately address the issue that the prisoner hopes to present. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 184.

¶5 "A no-merit appeal clearly qualifies as a previous motion under [WIS. STAT.] § 974.06(4)." ***State v. Allen***, 2010 WI 89, ¶41, 328 Wis. 2d 1, 786 N.W.2d 124. Accordingly:

> 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.

Tillman, 281 Wis. 2d 157, ¶19. We apply the rule set forth in ***Escalona-Naranjo*** to a § 974.06 motion filed after a no-merit appeal if "the no-merit procedures (1) were followed; and (2) warrant sufficient confidence to apply the procedural bar." *See* ***Allen***, 328 Wis. 2d 1, ¶62.

¶6 Satcher demonstrates no inadequacy in the no-merit proceeding in his case. Our decision in ***Satcher I*** reflects that we conducted a thorough review of the record. We explained our agreement with appellate counsel's description and analysis of "the validity of Satcher's guilty plea, trial counsel's claimed ineffectiveness at sentencing and the trial court's exercise of sentencing discretion." ***Id.***, No. 2004AP1304-CRNM, slip op. at 2. We also considered the contentions raised by Satcher in his response to the no-merit report, addressing his claims that "he was entitled to suppression of his confession and the gun, and [his] challenges [to] the validity of his guilty plea." *See* ***id.*** After discussing and analyzing the issues that might be thought to support an appeal, we concluded that further proceedings would lack arguable merit. ***Id.***, No. 2004AP1304-CRNM, slip op. at 5.

¶7 We are satisfied that the no-merit procedures were followed in ***Satcher I***. Therefore, our affirmance of Satcher's conviction "carries a sufficient degree of confidence warranting the application of the procedural bar." *See* ***Tillman***, 281 Wis. 2d 157, ¶20.

¶8 Satcher contends, however, that we should disregard ***Tillman*** here because that case postdates our decision in ***Satcher I***. We reject this contention. Our decision in ***Tillman*** addressed the mechanics of applying ***Escalona-Naranjo*** when a prisoner seeks relief under WIS. STAT. § 974.06 after pursuing an appeal under WIS. STAT. RULE 809.32. Proceedings under § 974.06 are civil in nature. WIS. STAT. § 974.06(6). We presume the retroactive application of judicial holdings that establish rules of civil procedure. *See* ***Trinity Petroleum, Inc. v. Scott Oil Co.***, 2007 WI 88, ¶¶80-81, 302 Wis. 2d 299, 735 N.W.2d 1. Moreover, application of ***Tillman*** to Satcher's claims "is consistent with the fact that the ***Escalona-Naranjo*** rule has been applied retroactively by our courts in the past."

See ***State ex rel. Krieger v. Borgen***, 2004 WI App 163, ¶12, 276 Wis. 2d 96, 687 N.W.2d 79. Consequently, we conclude that ***Tillman*** is applicable to Satcher. He thus may not pursue a second or subsequent motion under § 974.06 absent a sufficient reason for failing to include a full presentation of his claims in response to the no-merit report. *See* ***Tillman***, 281 Wis. 2d 157, ¶19.

¶9 In his appellate briefs, Satcher asserts that he did not raise his current claims previously because he relied on the authority of a federal case, ***Page v. Frank***, 343 F.3d 901 (7th Cir. 2003). In his view, ***Page*** "held [that the defendant] had not waived his claim by failing to raise his issues in his *pro se* response to [an] ***Anders*** brief." Satcher explains that "it was this authority that Satcher relied on, in not presenting his claims in response to counsel's ***Anders*** brief."

¶10 Satcher, however, first alleges his reliance on ***Page*** in his appellate brief-in-chief. He did not cite ***Page*** in his postconviction motion, nor did he offer the circuit court any other reason to disregard the procedural bar imposed by WIS. STAT. § 974.06 and ***Escalona-Naranjo***.

¶11 Satcher's failure to allege within the body of his postconviction motion any basis for serial litigation bars him from proceeding further in this matter. "Defendants must, at the very minimum, allege a sufficient reason in their motions to overcome the ***Escalona-Naranjo*** bar." ***Allen***, 328 Wis. 2d 1, ¶46. When a defendant fails to identify and support a sufficient reason for serial litigation in the postconviction motion itself, "the circuit court should summarily deny the motion." *See* ***id.***, ¶91. The circuit court properly did so here. *See* ***id.***

¶12 We need not consider Satcher's claims on appeal any further. For the sake of completeness, however, we note, as did both the State and the circuit court, that Satcher presented the core of his current claims to this court in his

response to the no-merit report. There, he alleged that he was "entitled to" an order suppressing both physical evidence and his statements, and he alleged that his trial counsel was ineffective by failing to file a suppression motion seeking such an order. He also alleged "that [his] guilty plea was not knowingly, intelligently, or voluntarily entered." We rejected all of these contentions. We explained why a suppression motion would lack arguable merit and why the record reflected a knowing, intelligent, and voluntary plea. ***Satcher I***, 2004AP1304-CRNM, slip op. at 3-5. We will not revisit previously rejected issues, no matter how artfully they are restated. *See* ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). We affirm.

By the Court.—Order affirmed.

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