COURT OF APPEALS
DECISION
DATED AND FILED

January 29, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP461 **Cir. Ct. No. 1995CF955598A**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAWRENCE WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

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

¶1 PER CURIAM. Lawrence Williams, *pro se*, appeals from a circuit court order denying his motion for postconviction relief brought under WIS. STAT.

§ 974.06 (2009-10).[1] He also appeals from orders denying his motions for reconsideration. The circuit court determined that his claims are procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We affirm.

BACKGROUND

¶2 A jury found Williams guilty of eleven felonies as a party to each crime. He pursued a direct appeal with the assistance of counsel, contending that the police improperly elicited his custodial statements and that a juror was wrongly dismissed before deliberations began. We affirmed. ***State v. Williams***, 220 Wis. 2d 458, 583 N.W.2d 845 (Ct. App. 1998) (***Williams I***).

¶3 Williams next filed a *pro se* motion for postconviction relief pursuant to WIS. STAT. § 974.06. He alleged that he received ineffective assistance from his trial counsel. The circuit court denied relief, and we affirmed. ***State v. Williams***, No. 2010AP1028, unpublished slip op. (WI App Mar. 8, 2011) (***Williams II***). In our twenty-four page opinion, we addressed and rejected Williams's claims that his trial counsel was ineffective by:

> (1) failing to investigate certain alibi witnesses; (2) failing to challenge the prosecutor's comments during voir dire; (3) failing to challenge the striking of a potential juror for cause; (4) failing to challenge the prosecutor's comments during closing argument; (5) failing to adequately challenge the admissibility of the statements Williams made to the police after his arrest; (6) failing to include

[1] Williams refers to himself in his submissions as "Lawrence Williams III." We refer to him by his name as it appears on the judgment of conviction and as it appears in the caption of the prior appellate decision in his case. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

> Williams in sidebars; and (7) failing to challenge the jury instruction on party-to-a-crime culpability.

See ***id.***, ¶¶8, 62.

¶4 On January 18, 2012, Williams filed another *pro se* motion for postconviction relief pursuant to WIS. STAT. § 974.06. He contended that, for a number of reasons, the jury was not properly instructed regarding party-to-a-crime liability. He sought a new trial. The circuit court denied his claims, concluding that they were procedurally barred. Williams filed two motions for reconsideration, which the circuit court also denied, and he appeals.[2]

DISCUSSION

> ¶5 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

[2] Williams's notice of appeal states that he appeals from an order denying his postconviction motion for a new trial. The notice identifies the date of that order as February 7, 2012. On that date, the circuit court denied one of Williams's motions to reconsider the order of January 23, 2012, denying his motion for a new trial. The error is inconsequential. A notice of appeal is sufficient if this court can determine the order or orders challenged. *See* ***Rhyner v. Sauk Cnty.***, 118 Wis. 2d 324, 326, 348 N.W.2d 588 (Ct. App. 1984). We are satisfied that Williams's notice of appeal reflects that he intends to appeal the order of January 23, 2012, and the orders of February 7, 2012, and February 20, 2012, denying his motions to reconsider the order of January 23, 2012.

proceeding to raise or adequately address the issue that the prisoner hopes to present. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 184.

¶6 Williams states that his postconviction counsel afforded him ineffective assistance by failing to raise the issues Williams raises now. He maintains that his postconviction counsel's ineffectiveness constitutes a sufficient reason for his current litigation. We disagree. In some circumstances, alleged ineffective assistance by a defendant's postconviction counsel can be a sufficient reason for permitting an additional postconviction motion pursuant to WIS. STAT. § 974.06. *See* ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 683, 556 N.W.2d 136 (Ct. App. 1996). Postconviction counsel's alleged ineffectiveness does not, however, permit an unlimited number of successive postconviction motions. Here, postconviction counsel's alleged ineffectiveness does not explain Williams's own failure to address his claims fully in the postconviction motion underlying ***Williams II***. Thus, Williams's claim that his postconviction counsel was ineffective in his appeal of right is not sufficient to permit a second *pro se* collateral attack on his convictions.

¶7 Williams also appears to suggest that his current litigation is governed by cases that he construes as requiring federal courts to consider successive petitions for federal *habeas corpus* relief unless the prisoner personally waived or relinquished the issue presented. Leaving aside the question of whether Williams correctly construes the law governing federal courts and federal claims, his current litigation in Wisconsin state court is governed by WIS. STAT. § 974.06 and the mandates of our supreme court construing that statute in ***Escalona-Naranjo*** and its progeny. "[W]e are not bound by the [United States] Supreme Court's or federal appellate courts' holdings regarding federal *habeas corpus* law

when we apply Wis. Stat. § 974.06." ***State v. Crockett***, 2001 WI App 235, ¶10 n.3, 248 Wis. 2d 120, 635 N.W.2d 673.

¶8 Finally, Williams asserts that he is entitled to pursue another attack on his convictions because this court did not address his current claims in ***Williams II***. We reject his interpretation of ***Williams II***. There, we identified the issues that he raised, including a claim that his trial counsel was ineffective by "failing to challenge the jury instruction on party-to-a-crime culpability." ***Id.***, No. 2010AP1028, unpublished slip op. ¶8. We discussed all of the claims that we identified, specifically determining that the jury instruction he challenged "is not wrong." *See* ***id.***, No. 2010AP1028, unpublished slip op. ¶¶8, 58. We further rejected his claim that trial counsel performed ineffectively by failing to object to the instruction, because his trial counsel in fact did object. We explained that "counsel cannot be faulted for not making an objection that [counsel] actually made." *See* ***id.***, No. 2010AP1028, unpublished slip op. ¶61.

¶9 Williams fastens on to a footnote in ***Williams II*** in which we observed that he was not always clear in his appellate briefs. *See* ***id.***, No. 2010AP1028, unpublished slip op. ¶8 n.4. We explained that, to the extent that he might have sought to raise any issues in addition to the seven that we were able to decipher, he had not sufficiently identified those issues and had failed to develop them in his briefs. ***Id.*** Nothing in our footnote affords Williams an opportunity to present again an issue that we in fact discussed in ***Williams II***. Indeed, nothing in our footnote permits Williams an opportunity to present an issue that he did not adequately address in the briefs underlying ***Williams II***. A party hoping to present an issue in a second or subsequent postconviction motion must offer a sufficient reason for failing either to present or fully develop the issue in an earlier postconviction proceeding. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 184. A party's

inadequate presentation of an issue in one postconviction motion is not itself a sufficient reason for another postconviction motion. *See* ***id.*** For all of the foregoing reasons, we affirm.

By the Court.—Orders affirmed.

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