

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 6, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 96-2766

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOSE ALDAZABAL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Dane County: JACK F. AULIK, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Jose Aldazabal appeals from an order denying his second § 974.06, STATS., motion for postconviction relief. The trial court summarily denied relief under the holding in *State v. Escalona-Naranjo*, 185 Wis.2d 168, 173, 517 N.W.2d 157, 159 (1994). We affirm.

Aldazabal was convicted of delivery of cocaine within 1000 feet of a community center in 1993. In 1994, he filed a motion for postconviction relief pursuant to § 974.06, STATS. The trial court denied relief and Aldazabal appealed. We affirmed the order denying postconviction relief in a decision released in December 1995. *State v. Aldazabal*, No. 94-3244, unpublished slip op. (Wis. Ct. App. Dec. 21, 1995).

After the supreme court denied review of our decision, Aldazabal again filed for relief under § 974.06, STATS. The trial court's order denying relief on that second motion is the subject of this appeal.¹

Without sufficient reason, a defendant cannot obtain relief under § 974.06, STATS., on any issue that was or could have been raised in an earlier motion under that section, in an earlier § 974.02, STATS., motion or in an earlier appeal. See *State v. Tolefree*, 209 Wis.2d 421, 425-26, 563 N.W.2d 175, 177 (Ct. App. 1997) (citing *Escalona-Naranjo*, 185 Wis.2d at 184-86, 517 N.W.2d at 163-64); § 974.06(4). One of the issues Aldazabal raises in his brief was, in fact, resolved in his prior appeal and cannot be relitigated. See, e.g., *State v. Witkowski*, 163 Wis.2d 985, 990, 473 N.W.2d 512, 514 (Ct. App. 1991). With respect to the other issues, he has advanced no reason for failing to raise them in his initial motion. The trial court therefore properly denied the motion summarily, without addressing its merits.

By the Court.—Order affirmed.

¹ The record also contains a subsequent trial court order denying what the trial court refers to as Aldazabal's third petition for a writ of habeas corpus. If Aldazabal did, in fact, file a third motion or petition for relief, it does not appear in the record. It is also not identified in Aldazabal's notice of appeal as a subject of this appeal.

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

