

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 29, 1999

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.

**Nos. 99-0424-CR
99-0425-CR
99-0427-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GARY R. MALKMUS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Fond du Lac County:
STEVEN W. WEINKE, Judge. *Affirmed.*

NETTESHEIM, J. Gary R. Malkmus appeals pro se from an order denying his motion for sentence credit. The trial court denied the motion without a hearing on the basis that the motion had been previously addressed and denied. We reject Malkmus's issue on a different ground. We hold that Malkmus is

precluded from raising this issue pursuant to *State v. Escalona-Naranjo*, 185 Wis.2d 168, 173, 517 N.W.2d 157, 159 (1994).

This is the second appeal in this matter. In a prior opinion, we held that the State had sufficiently established Malkmus's prior convictions for purposes of the habitual criminal statute. *See State v. Malkmus*, Nos. 96-2700-CR, 96-2701-CR, unpublished slip op. (Wis. Ct. App. Feb. 12, 1997). Malkmus did not raise the current issue in that appeal. *Escalona-Naranjo* holds that such a failure bars later consideration of an issue, including constitutional issues, unless the court ascertains that a sufficient reason exists for the failure. *See Escalona-Naranjo*, 185 Wis.2d at 183, 517 N.W.2d at 163. Malkmus has offered no explanation in this appeal as to why the matter was not previously raised. We decline to address Malkmus's issue.

By the Court.—Orders affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

