COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1392 **Cir. Ct. No. 2007CF50**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON LEE EDMONSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Outagamie County: VINCENT R. BISKUPIC, Judge. *Affirmed*.

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Jason Edmonson, pro se, appeals an order denying his WIS. STAT. § 974.06 motion for postconviction relief.[1] Like the circuit court,

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

we conclude the arguments raised in Edmonson's motion are procedurally barred. We therefore affirm.

BACKGROUND

¶2 In February 2009, Edmonson was convicted, following a jury trial, of one count of first-degree sexual assault of a child under the age of thirteen and two counts of bail jumping. He received aggregate sentences totaling twenty-five and one-half years' initial confinement and twenty-three years' extended supervision.

¶3 Edmonson's appointed counsel subsequently filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there were no issues of arguable merit to pursue on direct appeal. *See* ***State v. Edmonson***, No. 2012AP1259, unpublished slip op., ¶2 (WI App Apr. 23, 2013). "The no-merit report addressed the sufficiency of the evidence, some evidentiary rulings and the sentence imposed." ***Id.*** Edmonson filed a response to the no-merit report challenging his detention by police and the search of his house and also alleging prosecutorial misconduct and ineffective assistance of trial counsel. ***Id.***, ¶3. Upon our independent review of the record, as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we concluded there was no arguable basis for appeal and summarily affirmed the judgment of conviction. ***Edmonson***, No. 2012AP1259, unpublished slip op., ¶3.

¶4 On March 21, 2012, Edmonson, pro se, moved for postconviction relief under WIS. STAT. § 974.06. He again challenged the legality of his arrest and the seizure of property from his home. He also again argued his trial attorney was ineffective on several grounds. Finally, he challenged the trial court's jurisdiction and argued his sentence was not authorized by law. The circuit court

summarily denied Edmonson's motion, stating, "The issues the defendant attempts to raise have all been decided by the Court of Appeals; and therefore, there is no factual or legal basis upon which to grant the relief requested."

¶5 Edmonson appealed, and we affirmed the circuit court's order, holding Edmonson's claims were procedurally barred by WIS. STAT. § 974.06(4) and ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). ***Edmonson***, No. 2012AP1259, unpublished slip op., ¶¶1, 5. We explained that Edmonson's postconviction motion presented "several of the same claims that were rejected in the no-merit appeal[,]" and, as for the new issues, Edmonson had not provided a sufficient reason for his failure to raise them in his response to the no-merit report. ***Id.***, ¶¶6, 8. We further stated Edmonson's proffered sufficient reason—the ineffectiveness of his postconviction/appellate attorney on direct review—was conclusory and legally insufficient to overcome the procedural bar. ***Id.***, ¶7. In addition, we held that Edmonson had not demonstrated his no-merit appeal was procedurally inadequate, and that our resolution of the no-merit proceeding "carrie[d] a sufficient degree of confidence warranting application of the procedural bar." ***Id.***, ¶6.

¶6 On May 4, 2015, Edmonson filed a second WIS. STAT. § 974.06 motion, claiming the State had violated his right to due process by failing to preserve potentially exculpatory evidence. Specifically, he asserted the State should have conducted some type of "rape kit" test on the victim. He also contended his trial attorney was ineffective in various respects, and his postconviction/appellate attorney was ineffective by failing to raise arguments regarding the rape kit and ineffective assistance of trial counsel on direct appeal.

¶7 The circuit court denied Edmonson's second WIS. STAT. § 974.06 motion on July 1, 2015. The court concluded all of Edmonson's arguments were procedurally barred because they "either were or could have been raised in his first § 974.06 motion …." The court further concluded Edmonson had not provided a sufficient reason for his failure to raise the arguments earlier. Edmonson now appeals.

DISCUSSION

¶8 WISCONSIN STAT. § 974.06(4) requires a convicted defendant to raise all grounds for postconviction relief in his or her original, supplemental, or amended motion or appeal. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185-86. Accordingly, a defendant may not bring postconviction claims under § 974.06 that he or she could have raised in a previous postconviction motion or on direct appeal unless he or she states a "sufficient reason" for failing to raise those issues earlier. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-82. Whether a defendant's claims are procedurally barred is a question of law that we review independently. *See* ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶9 "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. We therefore 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. Thus, if those conditions apply, "a defendant may not raise issues in a subsequent § 974.06 motion that he [or she] could have raised in response to a no-merit report, absent a 'sufficient reason' for failing to raise the issues earlier in the no-merit appeal." ***Allen***, 328 Wis. 2d 1, ¶4.

¶10 Here, all of the claims raised in Edmonson's most recent WIS. STAT. § 974.06 motion are procedurally barred. Edmonson could have, but failed to, raise his arguments regarding ineffective assistance of trial counsel and the State's failure to conduct a "rape kit" test in his response to the no-merit report. He also could have raised these arguments, as well as his ineffective assistance of postconviction/appellate counsel arguments, in his previous § 974.06 motion.

¶11 Edmonson has not provided a sufficient reason for his failure to raise his new postconviction arguments earlier. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 181-82. He contends he failed to raise his new arguments in his previous WIS. STAT. § 974.06 motion or on direct appeal due to his own lack of legal acumen. However, he does not explain why the straightforward issues raised in his most recent § 974.06 motion were any more difficult for him to identify or raise than the many other issues he raised in his response to the no-merit report and in his first § 974.06 motion. Nor does he explain why he is now able to identify and raise issues that he contends were previously overlooked not only by himself, but also by his trial and postconviction/appellate attorneys, as well as by this court during its independent review of the record in the context of the no-merit proceedings. Under these circumstances, accepting Edmonson's purported lack of legal acumen as a sufficient reason for failing to raise appellate issues earlier would effectively emasculate the ***Escalona-Naranjo*** procedural bar.

¶12 Edmonson also appears to contend the proper procedures were not followed during the no-merit appeal. However, we concluded otherwise in Edmonson's previous appeal, stating, "[O]ur resolution of the no-merit proceeding carries a sufficient degree of confidence warranting application of the procedural bar." ***Edmonson***, No. 2012AP1259, unpublished slip op, ¶6. That determination is the law of the case and, accordingly, is not subject to attack in the instant

proceedings. *See* ***State v. Stuart***, 2003 WI 73, ¶23, 262 Wis. 2d 620, 664 N.W.2d 82 (quoting ***Univest Corp. v. General Split Corp.***, 148 Wis. 2d 29, 38, 435 N.W.2d 234 (1989) ("The law of the case doctrine is a 'longstanding rule that a decision on a legal issue by an appellate court establishes the law of the case, which must be followed in all subsequent proceedings in the trial court or on later appeal.'").

By the Court.—Order affirmed.

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