**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**January 11, 2006**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2005AP328** **Cir. Ct. No. 1994CM491**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TRAVIS E. BLANKS,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Racine County: EMILY S. MUELLER, Judge. *Affirmed*.

¶1 BROWN, J.[1] When last we heard from Travis E. Blanks, it was on appeal of a denial of a WIS. STAT. § 974.06 motion. In a May 26, 2004 opinion of this court, we began with the following:

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 751.32(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

> Finality is quintessential in resolving litigation; to achieve this result, WIS. STAT. § 974.06(4) bars successive motions and appeals. We affirm the denial of Travis E. Blanks' postconviction motion because all of the issues he raises should have been raised in his 1995 direct appeal.

***State v. Blanks***, No. 2003AP2565, unpublished slip op. at ¶1 (WI App May 26, 2004). Blanks had raised three claims in his § 974.06 motion. They were: (1) the circuit court failed to adequately advise him of the possible penalties he faced as a habitual criminal, (2) the court improperly imposed the repeater status in pronouncing sentence, and (3) double jeopardy. All were rejected on grounds that he could have raised the issues in his direct appeal. We explained that the law bars Blanks from bringing postconviction claims, including constitutional claims, under § 974.06, if he could have raised the issues in a previous postconviction motion or direct appeal. *See* ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). We also held that, while the law provides an exception where it is determined that a defendant showed sufficient reason for failing to raise an issue or issues in the direct appeal, Blanks had not shown a sufficient reason.

¶2 Like a broken record, Blanks is at it again. This time, he has attempted to use a statute different from WIS. STAT. § 974.06 in an attempt to raise virtually the same issues. This time, he brought his action to the circuit court under the guise of WIS. STAT. § 973.13. That statute reads as follows:

> **973.13 Excessive sentence, errors cured.** In any case where the court imposes a maximum penalty in excess of that authorized by law, such excess shall be void and the sentence shall be valid only to the extent of the maximum term authorized by statute and shall stand commuted without further proceedings.

¶3 As we understand his claim, Blanks argues that while it is true that he pled to misdemeanor criminal damage to property as a repeater, and while he

agrees that his plea acknowledged the underlying prior conviction giving rise to the repeater, he claims that he was never informed of the maximum penalty that he could receive as a result of the repeater. He admits that the plea questionnaire informed him the maximum penalty upon conviction was three years, a $10,000 fine or both, but argues that this did not inform him as to what portion of the exposure was attributable to the repeater status.

¶4 The issue he raises is not a proper WIS. STAT. § 973.13 claim. Section 973.13, as it pertains to sentencing a repeat offender, applies only when the State fails to prove the prior conviction necessary to establish the habitual offender status (by proof or by admission) or when the penalty given is longer than permitted by law for a repeater. *See* ***State v. Spaeth***, 206 Wis. 2d 135, 155-56, 556 N.W. 2d 728 (1996). Blanks makes neither of the above arguments. He does not argue that the court sentenced him to prison for more time than the enhancement statute permits nor does he argue that the sentence was based on lack of proof by the State or lack of an admission by him that the prior conviction existed. Rather, he asserts that the court erred in the *process* of accepting his understanding to his plea. We hold that he cannot use § 973.13 as a means to raise this kind of claim. That is not what the statute is designed to remedy. We are left with merely his attempt to again initiate practically the same issues that he tried to raise without success in his WIS. STAT. § 974.06 appeal.

¶5 Blanks had the right to attack by direct appeal the plea process as it related to his understanding of the consequences of an enhancement penalty. He did not raise the issue in his direct appeal. And, as we ruled in his last appeal to this court, ***Escalona-Naranjo*** barred him from raising the issue by way of a WIS. STAT. § 974.06 motion. We rule in this appeal that he may not use WIS. STAT.

§ 973.13 as an "end around" the result of the last appeal because, quite simply, his issue is not a true § 973.13 claim.

*By the Court.*— Order affirmed.

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