

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2003AP2612

Cir. Ct. No. 2001CF818

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

WAR N. MARION,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. War N. Marion appeals *pro se* from an order summarily denying his third postconviction motion. We conclude that Marion's third postconviction motion is procedurally barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994). Therefore, we affirm.

¶2 In 2001, Marion pled guilty to the reduced charge of second-degree reckless homicide while using a dangerous weapon, contrary to WIS. STAT. §§ 940.06(1) (2001-02) and 939.63 (2001-02). The trial court imposed a twenty-year sentence, consecutive to any other sentence, comprised of twelve- and eight-year respective periods of confinement and extended supervision. Appointed counsel filed a no-merit report pursuant to *Anders v. California*, 386 U.S. 738 (1967) and WIS. STAT. RULE 809.32(1) (amended July 1, 2001); Marion elected not to respond.¹ This court affirmed the judgment of conviction. *See State v. Marion*, No. 01-3117-CR-NM, unpublished slip op. (WI App Apr. 22, 2002). Marion filed a postconviction motion for sentence modification, which the trial court denied as procedurally barred by *Escalona*. Marion did not appeal from that denial. Marion then filed another postconviction motion, which the trial court also denied as procedurally barred by *Escalona*. Marion did not appeal from that second *Escalona* denial.

¶3 Marion filed a third postconviction motion, which the trial court also denied as procedurally barred by *Escalona*.² Marion appeals from that order.

¶4 *Escalona* requires a criminal defendant to raise all grounds for postconviction relief in his or her original, supplemental or amended postconviction motion, or on direct appeal. *See Escalona*, 185 Wis. 2d at 185-86;

¹ While his no-merit appeal was pending, Marion filed a postconviction motion. The trial court denied that motion, which Marion failed to appeal.

² Although the trial court and this court refer to this postconviction motion as Marion's third, it is actually his fourth, because he filed a postconviction motion during the pendency of his no-merit appeal.

WIS. STAT. § 974.06(4) (2003-04).³ If a criminal defendant files a successive postconviction motion, he or she must allege a “*sufficient reason*” for failing to previously raise the belated issue. *See Escalona*, 185 Wis. 2d at 185; § 974.06(4). Whether a successive postconviction claim is procedurally barred is a question of law entitled to independent review. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

¶5 Marion’s postconviction motion is largely incomprehensible, as is his appellate brief. Insofar as we can glean Marion’s reasons for failing to previously raise these issues, they seem to be “other 974.06 forms denied 1/16/02, 6/13/02, 7/30/02,” and the ineffective assistance of appellate counsel. These reasons are insufficient to overcome *Escalona*’s procedural bar. First, if postconviction forms were “denied” in 2002, Marion does not explain why he failed to respond to counsel’s no-merit report, which did not require “forms,” or why he was able to file other postconviction motions. Second, Marion does not explain why he did not appeal from the postconviction order denying his previous motion alleging the ineffective-assistance of counsel. Finally, notwithstanding the fact that ignorance of *Escalona*’s procedural bar is not a valid excuse for noncompliance, Marion has been amply notified of *Escalona* because it was the basis of the unappealed trial court orders denying his previous postconviction motions. We know of no valid reason to ignore *Escalona*’s procedural bar under these circumstances.

³ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

By the Court.—Order affirmed.

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

