

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2005

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. 04-1397

Cir. Ct. No. 98CF005826

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VICTOR RAYGOZA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
ELSA C. LAMELAS, Judge. *Affirmed.*

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

¶1 PER CURIAM. Victor Raygoza appeals *pro se* from an order denying his WIS. STAT. § 974.06 (2003-04) motion.¹ He claims the trial court

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

erred when it summarily denied his motion. Although Raygoza's brief is difficult to understand, it appears that he is raising three errors: (1) the State coerced perjurious testimony from one of its witnesses; (2) the trial court should have suppressed certain evidence; and (3) the case should have been dismissed based on improper venue. Because all three claims are procedurally barred, we affirm.

BACKGROUND

¶2 On February 24, 1999, a jury found Raygoza guilty of conspiring to possess more than one hundred grams of cocaine with intent to deliver, contrary to WIS. STAT. § 961.41(1m)(cm)5., (1x) (1997-98). He was sentenced to twenty years in prison. His appellate counsel filed a no-merit report, which addressed the sufficiency of the evidence and sentencing. Raygoza filed a response to the no-merit report addressing those same issues. He also challenged the credibility of State witness Luis DeVillareal, and the fact that the quantity of cocaine was not mentioned during the sentencing hearing. After an independent review of the case, we affirmed the judgment of the trial court.

¶3 On April 30, 2004, Raygoza filed a *pro se* motion for a new trial “to correct plain errors which contribute and produce a manifest injustice.” The trial court summarily denied the motion, ruling that it was procedurally barred based on *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 178, 517 N.W.2d 157 (1994), and WIS. STAT. § 974.06(4). Raygoza now appeals.

DISCUSSION

¶4 Raygoza contends that the State coerced its witness, DeVillareal, into giving false testimony against Raygoza, that the trial court should have suppressed certain evidence, and that the trial court should have dismissed the

complaint based on improper venue. We hold that Raygoza is procedurally barred from pursuing these issues.

¶5 WISCONSIN STAT. § 974.06 and *Escalona-Naranjo* preclude a defendant from pursuing claims in a subsequent appeal, which could have been raised in his direct appeal, unless the defendant provides sufficient reason for the failure to raise the claims in the first instance. The State accurately summarizes the rule:

A claim that was finally adjudicated, waived or not raised when it could have been raised in a direct appeal or prior postconviction motion cannot be raised in a subsequent postconviction motion unless the defendant provides a sufficient reason for not asserting or inadequately asserting the claim in the direct appeal or prior motions.

See Escalona-Naranjo, 185 Wis. 2d at 173, 181-82, 184-86. All of the claims Raygoza made in his postconviction motion and all the issues he raises in this appeal were either raised or could have been raised in his direct appeal. Raygoza does not offer sufficient reason for the failure to raise these issues or adequately raise these issues during his direct appeal. Both Raygoza and his counsel had an opportunity to raise all pertinent issues during the direct appeal. Counsel filed a no-merit report raising two issues and Raygoza filed a response. We decided that all the issues raised were without merit and, after an independent review of the record, concluded that there were no other meritorious issues. We see nothing to change that conclusion.

¶6 Based on the foregoing, Raygoza is procedurally barred from pursuing the issues he raised in his postconviction motion and in this appeal. The trial court did not err in summarily denying his motion.

By the Court.—Order affirmed.

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

