COURT OF APPEALS
DECISION
DATED AND FILED

April 2, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1432 **Cir. Ct. No. 2001CF2994**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JERMAINE MCFARLAND,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed*.

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

¶1 PER CURIAM. Jermaine McFarland, *pro se*, appeals from orders denying his WIS. STAT. § 974.06 motion for postconviction relief and his motion for reconsideration. We agree with the circuit court that the § 974.06 motion is procedurally barred and, thus, we affirm the orders.

BACKGROUND

¶2 In 2002, McFarland was convicted by a jury on three counts: first-degree reckless injury with use of a dangerous weapon, endangering safety with a dangerous weapon, and possession of a firearm by a felon, all as an habitual offender. He was sentenced to indeterminate sentences of imprisonment totaling thirty-seven years.

¶3 McFarland filed a postconviction motion, pursuant to WIS. STAT. RULE 809.30, alleging ineffective assistance of trial counsel. The circuit court denied the motion, and McFarland appealed. We affirmed. *See* ***State v. McFarland***, No. 2004AP633-CR, unpublished slip op. (WI App Apr. 12, 2005).

¶4 In 2006, McFarland filed a *pro se* postconviction motion under WIS. STAT. § 974.06. He made multiple claims that trial counsel was ineffective, and he alleged ineffective assistance of both postconviction and appellate counsel in an attempt to explain why the claims against trial counsel had not been raised in the prior postconviction motion or direct appeal. The circuit court denied the motion, and McFarland appealed. We affirmed. *See* ***State v. McFarland***, No. 2006AP1647, unpublished slip op. (WI App May 22, 2007).

¶5 In April 2012, McFarland filed another *pro se* postconviction motion under WIS. STAT. § 974.06. He again raised claims of ineffective trial counsel. In particular, he alleged that trial counsel was deficient for failing to object to what McFarland believes was a defective criminal complaint and to the circuit court's purported failure to hold an arraignment. Those two errors ostensibly deprived the circuit court of jurisdiction, resulting in void convictions. In his attempt to explain why the current issues had not been raised before, McFarland also claimed postconviction and appellate counsel were ineffective. The circuit court denied

the motion on the grounds that it was barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). McFarland moved for reconsideration, which the circuit court denied.

DISCUSSION

¶6 WISCONSIN STAT. § 974.06 permits some claims for relief, including claims that the circuit court "was without jurisdiction to impose" sentence, to be brought after the time for appeal or other postconviction remedy has expired. *See* WIS. STAT. § 974.06(1). However, "[a]ll grounds for relief available to a person under this section must be raised in his or her original, supplemental or amended motion." *See* WIS. STAT. § 974.06(4). The phrase "'original, supplemental or amended motion'" also encompasses a direct appeal. *See* ***State v. Lo***, 2003 WI 107, ¶32, 264 Wis. 2d 1, 17, 665 N.W.2d 756, 764 (citation omitted).

¶7 If a defendant's grounds for relief "have been finally adjudicated, waived or not raised in a prior postconviction motion, they may not become the basis for a [WIS. STAT. §] 974.06 motion" except if, in the case of the failure to previously raise or adequately raise the issue, the circuit court finds sufficient reason for such failure. ***Escalona***, 185 Wis. 2d at 181–182, 517 N.W.2d at 162. Stated another way, § 974.06 "'compel[s] a prisoner to raise all questions available to him in one motion.'" ***Lo***, 2003 WI 107, ¶18, 264 Wis. 2d at 11, 665 N.W.2d at 760 (citation omitted). "Successive motions and appeals, which all could have been brought at the same time, run counter to the design and purpose" of § 974.06. ***Escalona***, 185 Wis. 2d at 185, 517 N.W.2d at 164.

¶8 Whether claims brought under WIS. STAT. § 974.06 are barred is a question of law we review *de novo*. ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175, 176 (Ct. App. 1997). On appeal, the State discerns McFarland to be

making three arguments as to why the ***Escalona*** bar does not apply to the current § 974.06 motion. We agree that McFarland has made three claims of error.

¶9 First, McFarland claims that ineffective assistance of postconviction and appellate counsel prevented him from raising his current claims earlier. However, while ineffective assistance of postconviction or appellate counsel might explain a failure to raise the current issues in the WIS. STAT. RULE 809.30 postconviction motion and McFarland's direct appeal, bad lawyering does not constitute a sufficient reason for McFarland's failure to raise his current issues in his prior *pro se* WIS. STAT. § 974.06 motion.

¶10 Second, McFarland claims that a local rule imposing a twenty-page limit on his first WIS. STAT. § 974.06 motion prevented him from raising all of his issues in that motion. The circuit court rejected this reasoning, noting that McFarland had wasted space in the prior motion by raising claims he had already litigated in the WIS. STAT. RULE 809.30 motion. We agree with that reasoning. In addition, we note that McFarland's first § 974.06 motion was less than seventeen pages long, yet he does not explain his failure to utilize the remaining space. Thus, the local rule does not constitute a sufficient reason for failing to raise the current issues in the prior motion.

¶11 Third, McFarland claims that ***Escalona*** does not apply because of his underlying jurisdictional claims. However, McFarland cites no authority for his proposition, likely because WIS. STAT. § 974.06(1) expressly states that it covers jurisdictional challenges. Thus, the nature of McFarland's underlying claims does not constitute a sufficient reason to avoid the ***Escalona*** bar. We therefore conclude the circuit court properly concluded that the current § 974.06 motion is procedurally barred.

By the Court.—Orders affirmed.

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