

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2013

Diane M. Fremgen
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. 2012AP1254

Cir. Ct. No. 2006CF5835

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSHUA LEE OLIVAR,

DEFENDANT-APPELLANT.

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

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Joshua Lee Olivar, *pro se*, appeals the circuit court's order denying his postconviction motion. The issue is whether Olivar's claim is barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). We conclude that it is barred. Therefore, we affirm.

¶2 Olivar was convicted of second-degree reckless homicide as a party to a crime in 2007. By appointed appellate counsel, he moved for postconviction relief, arguing that he should be allowed to withdraw his guilty plea and that he received ineffective assistance of counsel. The circuit court denied the motion. On appeal, we affirmed. In 2010, Olivar filed a second motion for postconviction relief *pro se*, arguing that he received ineffective assistance of counsel because his lawyer did not properly advise him about the DNA surcharge. He also argued that his right to equal protection had been violated because the surcharge had been imposed on him. The circuit court granted the motion, vacating the DNA surcharge. Olivar then filed a third motion for postconviction relief *pro se*, arguing that he should be allowed to withdraw his guilty plea because his attorney did not explain the defenses that were available to him. The circuit court denied the motion.

¶3 The postconviction procedures of WIS. STAT. § 974.06 (2011-12)¹ allow a defendant to attack his conviction after the time for appeal has expired. See *Escalona-Naranjo*, 185 Wis. 2d at 176. There is, however, a limitation: an issue that could have been raised on direct appeal or by prior motion is barred from being raised in a subsequent postconviction motion absent a sufficient reason for not raising the issue earlier. See *State v. Lo*, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. Olivar has not provided a sufficient reason for not raising his current claims in his two prior postconviction motions and direct appeal. Allowing “[s]uccessive motions and appeals, which all could have been brought at

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

the same time” is prohibited by WIS. STAT. § 974.06 and *Escalona-Naranjo*, which teaches that “[w]e need finality in our litigation.” *Id.*, 185 Wis. 2d at 185.

By the Court.—Order affirmed.

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

