COURT OF APPEALS
DECISION
DATED AND FILED

April 29, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2008AP1737-CR **Cir. Ct. No. 1999CF1133**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RONALD W. TALERONIK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Kenosha County: DAVID M. BASTIANELLI, Judge. *Affirmed*.

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. Ronald W. Taleronik, pro se, appeals an order denying his motion for postconviction relief by which he sought to withdraw his

guilty plea, set aside the judgment of conviction and vacate his sentence. None of his arguments persuade us. We affirm.

¶2 In October 1997, Taleronik was taken into custody for allegedly violating parole in one Brown county and two Shawano county cases. In 1999, he was charged with theft by fraud, contrary to WIS. STAT. § 943.20(1)(d) (2007-08).[1] The complaint alleged that between July 23 and September 5, 1997, Taleronik sold advertising to Racine and Kenosha businesses in two newspapers he claimed to be starting, *The Post* and *The Agenda*; that he represented having a subscriber base of 5,000 but actually had none; and that he published only one edition of *The Post* and none of *The Agenda*. It also alleged that Taleronik defrauded customers out of over $2500. Pursuant to a plea agreement, Taleronik pled guilty and the parties stipulated that he owed $3,331.99 in restitution. In January 2000, the court withheld sentence and ordered ten years' probation and ordered Taleronik to pay the stipulated restitution.

¶3 In May 2001, Taleronik's Shawano county probation was revoked. He was released in June 2005 only to be revoked again in June 2007 on both the Shawano and Kenosha county cases. On October 2, 2007, the Kenosha county circuit court sentenced him to five years' imprisonment consecutive to the Shawano county sentence.

¶4 Taleronik filed a pro se WIS. STAT. § 974.06 motion for postconviction relief seeking to withdraw his guilty plea and to have the January

[1] Taleronik was charged as a repeater because of a 1995 Shawano county theft conviction. All references to the Wisconsin Statutes are to the 2007-08 version unless noted.

2000 withheld sentence and order for ten years' probation vacated. He raised myriad issues: (1) double jeopardy[2]; (2) that the WIS. STAT. § 943.20(1)(d) theft-by-fraud charge was duplicitous because it improperly aggregated all the victims' losses to reach the $2500 statutory threshold; (3) that the trial court lacked subject matter jurisdiction; (4) that his plea, conviction and sentence hinged on inaccurate information; (5) that an unnecessary charging delay deprived him of a speedy trial, causing a manifest injustice; (6) that his restitution should be modified to zero; (7) that his guilty plea did not waive nonjurisdictional defenses; and (8) that a new factor warrants the relief he seeks. Construing the motion as one filed pursuant to WIS. STAT. RULE 809.30, the court denied it after examining each issue.[3]

---

[2] The double jeopardy claim involved another Kenosha county charge of issuing a worthless check in connection with *The Agenda*. The State dismissed the charge and no conviction resulted. The trial court concluded double jeopardy provided no basis for relief. Taleronik affirmatively abandons this claim on appeal.

[3] In regard to the recasting of the postconviction motion, as noted, Taleronik moved for postconviction relief under WIS. STAT. § 974.06. The State moved to dismiss the motion on the basis that Taleronik failed to first exhaust his WIS. STAT. § 974.02 remedies. Instead of addressing the State's motion, the court treated Taleronik's motion as having been filed under WIS. STAT. RULE 809.30. It was timely under RULE 809.30 because this court extended the filing deadline to accommodate Taleronik's decision to go pro se.

Each statutory approach has limitations. Under WIS. STAT. RULE 809.30, Taleronik could challenge only issues relating to his post-revocation sentence. *See* ***State v. Tobey***, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996); ***State v. Drake***, 184 Wis. 2d 396, 399, 515 N.W.2d 923 (Ct. App. 1994). Motions under WIS. STAT. § 974.06 are confined to matters of jurisdictional and constitutional dimension. *See* ***State v. Lo***, 2003 WI 107, ¶33, 264 Wis. 2d 1, 665 N.W.2d 756. The trial court stated that it viewed the filing as a RULE 809.30 motion but in fact gave the matter something of a hybrid treatment. With that background and considering Taleronik's pro se status, we will treat his appeal as coming to us both by way of RULE 809.30 to the extent that he challenges the post-revocation sentence, and § 974.06 to the extent that he challenges his plea.

¶5 On appeal, Taleronik resurrects all of the same challenges except double jeopardy, which he affirmatively abandons. Each of his claims fails, however, because, by pleading guilty, he waived—or, more precisely, forfeited — the right to appeal them. *See* ***State v. Kelty***, 2006 WI 101, ¶18 and n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (observing the general rule that a guilty plea waives all nonjurisdictional defects, including constitutional claims, but noting that "forfeiture" more accurately conveys the effect of a plea because "waiver" means an intentional relinquishment of a known right). Taleronik asserts, however, that ***State v. Hubbard***, 206 Wis. 2d 651, 655-56, 558 N.W.2d 126 (Ct. App. 1996), shields his claims despite his guilty pleas. For several reasons, ***Hubbard*** does not save the day for him.

¶6 In ***Hubbard***, we noted Wisconsin's recognition of double jeopardy[4] as an exception to the guilty-plea-waiver rule and held that, absent an express waiver, a defendant is entitled to have the merits of a double jeopardy claim reviewed on appeal. ***Id.*** at 655, 657. The concern Taleronik raises in connection with his duplicity claim is not double jeopardy but that the State improperly aggregated separate misdemeanor theft offenses into a single felony offense. Second, ***Hubbard*** involved multiplicity, not duplicity, ***id.*** at 654, which are distinct concepts, ***State v. Seymour***, 183 Wis. 2d 683, 693 n.8, 515 N.W.2d 874 (1994). Third, ***Kelty*** overruled ***Hubbard*** to the extent that ***Kelty*** held that a guilty plea waives a multiplicity claim if the claim cannot be resolved on the record. ***Kelty***, 294 Wis. 2d 62, ¶34. We conclude, therefore, that Taleronik has forfeited his right to appellate review of his claims. We nonetheless will briefly address the

[4] Double jeopardy in this context is not the double jeopardy issue Taleronik waived.

merits of his arguments. *See* ***State v. Erickson***, 227 Wis. 2d 758, 766, 596 N.W.2d 749 (1999).

¶7 Taleronik contends *The Post* and *The Agenda* were two separate schemes, each with its own victims. He argues that because the prosecutor combined all of the fraudulent acts into one charge so as to reach the $2500 statutory threshold, a Class C felony, *see* WIS. STAT. § 943.20(3)(c) (1999-2000), the single theft-by-fraud charge against him is duplicitous. We first examine the factual allegations of the criminal complaint to determine whether it states more than one offense. ***State v. Lomagro***, 113 Wis. 2d 582, 587, 335 N.W.2d 583 (1983). Acts which alone constitute separately chargeable offenses "when committed by the same person at substantially the same time and relating to one continued transaction, may be coupled in one count as constituting but one offense" without violating the rule against duplicity. ***Id.*** (citation omitted).

¶8 The complaint alleges that between July 23 and September 5, 1997, Taleronik fraudulently obtained advertising revenues from forty-eight businesses for *The Post* which he represented had a subscriber base of 5,000 and from thirty-three businesses for *The Agenda*, which he represented would circulate to 8,000 business owners. Because the individual ad sales in that thirteen-day period properly could be viewed as one continuing offense, it was within the State's discretion to charge it as such. *See* ***id.*** Furthermore, the court explained to Taleronik the elements of the crime, that it was a Class C felony and that his repeater status could enhance the penalty. Taleronik expressly confirmed that he had no questions about the nature of the charge. He points to the "victim list," compiled for restitution purposes, to prove that each act was discrete and asserts that the two papers were separate enterprises. Nothing on the victim list or

elsewhere in the record elevates his claims above the level of bald assertions. The charge was not duplicitous.

¶9 Taleronik also contends the trial court lacked subject matter jurisdiction because, since he claimed to have sold some of the ads in Illinois, the amount sold in Wisconsin fell short of the $2500 necessary to convict him of a Class C felony. We review de novo whether a court had subject matter jurisdiction. ***Van Deurzen v. Yamaha Motor Corp. USA***, 2004 WI App 194, ¶9, 276 Wis. 2d 815, 688 N.W.2d 777.

¶10 A person is subject to prosecution and punishment under Wisconsin law if the person commits a crime, any of the constituent elements of which takes place in Wisconsin. WIS. STAT. § 939.03(1)(a). A "constituent element" is an element of the offense that the state must prove beyond a reasonable doubt to secure a conviction. ***State v. Anderson***, 2005 WI 54, ¶33, 280 Wis. 2d 104, 695 N.W.2d 731. The State would have had to prove that: (1) Taleronik made a false representation; (2) he knew was false; (3) intending to deceive and defraud; (4) he obtained title to another's property (here, money) by the false representation, and (5) the owner was deceived and defrauded by the false representation. *See* WIS JI—CRIMINAL 1453A.

¶11 The complaint alleged that Taleronik represented to Wisconsin and Illinois business owners that he would run ads for their businesses in the newspapers he claimed to have created. Taleronik asserts that he "performed all elements of the alleged criminal act entirely within the geographical limits of the State of Illinois," and offers as proof the victim list, which indicates that some of the victims' businesses are in Illinois. This assertion, without more—and there is

no more in the record—falls well short of showing that he performed all of the constituent elements of some of his fraudulent thefts outside Wisconsin.

¶12 Taleronik next asserts that his plea, plea agreement, conviction and sentence all were premised on inaccurate information. A defendant who moves for resentencing on the ground that the trial court relied on inaccurate information must establish that there was information before the sentencing court that was inaccurate, and that the trial court actually relied on the inaccurate information. ***State v. Tiepelman***, 2006 WI 66, ¶31, 291 Wis. 2d 179, 717 N.W.2d 1.

¶13 What Taleronik assails as inaccurate was the court's "erroneous view" that, since some of his "business activities" were in Illinois, his "course of conduct in Wisconsin was more serious than it actually was." In reality, then, Taleronik is claiming his conduct did not constitute a Class C felony, the crime to which he pled. Such a challenge goes to his conviction, not to his sentencing after revocation. Taleronik has failed to meet his burden.

¶14 Taleronik also complains of purposefully delayed charging due to vindictive prosecution. He asserts that although his criminal activity occurred in 1997, the prosecutor delayed charging him until 1999, violating his right to a speedy trial and resulting in a manifest injustice. This claim fails. First, by entering a guilty plea to the charge, Taleronik waived the right to review his claim to this alleged violation. *See* ***Foster v. State***, 70 Wis. 2d 12, 19-20, 233 N.W.2d 411 (1975). Second, speedy trial concerns do not attach until the defendant is criminally charged. *See* ***State v. Allen***, 179 Wis. 2d 67, 72, 505 N.W.2d 801 (Ct. App. 1993). Third, there also is no evidence that he ever made a speedy trial demand in writing or on the record. *See* WIS. STAT. § 971.10(2)(a). Finally, the record reveals no hint of vindictiveness. We summarily reject that argument.

¶15 The last issue is whether restitution should be modified to zero. Taleronik claims to have paid full restitution but asserts that the Department of Corrections (DOC) applied a portion of it to the wrong account. Taleronik stipulated to the amount to be paid. We agree with the trial court that any dispute that the amount credited to him is incorrect is between Taleronik and the DOC. *See* WIS. STAT. § 973.20(11).

By the Court.—Order affirmed.

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