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DISTRICT I

May 14, 2024

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

Anne Christenson Murphy
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Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Antonio J. Jones 525324
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P.O. Box 147
Fox Lake, WI 53933-0200

You are hereby notified that the Court has entered the following opinion and order:

2022AP515

State of Wisconsin v. Antonio J. Jones (L.C. # 2007CF1566)

Before White, C.J., Geenen and Colón, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Antonio J. Jones, *pro se*, appeals an order denying his request that the circuit court reconsider and reissue its decision denying his 2020 postconviction motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2021-22).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

To resolve this matter, we focus on the relevant procedural history.² On July 28, 2020, Jones filed a WIS. STAT. § 974.06 motion. On August 4, 2020, the circuit court denied the motion on grounds that it was procedurally barred.

Jones subsequently filed an untimely notice of appeal. This court dismissed Jones's appeal for lack of jurisdiction. *See* WIS. STAT. RULE 809.10(1)(e) (“The filing of a timely notice of appeal is necessary to give the court jurisdiction over the appeal.”). Jones then moved for reconsideration of the dismissal. In our order denying that motion, we explained that while Jones referenced various Wisconsin Supreme Court orders relating to the COVID-19 pandemic, none of the orders tolled the time for filing notices of appeal. The Wisconsin Supreme Court denied Jones's petition for review, concluding that it too was untimely.

On January 6, 2022, Jones asked the circuit court to reconsider and reissue its August 4, 2020 decision and order. Jones argued that his time to file his notice of appeal was enlarged by a United States Supreme Court order extending the time to file petitions for writs of certiorari by 150 days. The circuit court denied the request, explaining that it would “not sanction [Jones]’s attempt to resuscitate his appeal by reissuing its prior decision[.]” This appeal follows.

We review the circuit court's denial of a motion for reconsideration for an erroneous exercise of discretion. *State v. White*, 2008 WI App 96, ¶9, 312 Wis. 2d 799, 754 N.W.2d 214. We affirm a circuit court's discretionary determination “when the court applies the correct legal

² This court previously detailed the facts leading to Jones's conviction for one count of first-degree reckless homicide while armed in our decision resolving his direct appeal. *See State v. Jones*, No. 2009AP498-CR, unpublished slip op. (WI App Nov. 17, 2009).

standard to the facts of record and reaches a reasonable result.” *Keller v. Keller*, 2002 WI App 161, ¶6, 256 Wis. 2d 401, 647 N.W.2d 426.

Jones makes two arguments on appeal. First, Jones renews his claim that he should have been able to proceed with his appeal from the decision and order denying his WIS. STAT. § 974.06 postconviction motion based on an order of the United States Supreme Court that he claims “extended deadlines to file petitions ‘in all relevant lower courts’ by 150 days.” Alternatively, and for the first time, Jones argues that circumstances outside of his control warranted tolling the time limit for him to file his notice of appeal. Namely, the COVID-19 lockdown that began in the prison where he was located in March 2020, which he claims hindered his access to the law library. Jones contends that if he had access to the law library, he would have filed a timely notice of appeal. Both arguments are unpersuasive.

The United States Supreme Court order on which Jones relies provides that in any case where “the relevant lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing was issued prior to July 19, 2021, the deadline to file a petition for a writ of certiorari remains extended to 150 days from the date of that judgment or order.” *Miscellaneous Order Rescinding COVID-19 Related Orders*, 338 F.R.D. 801, 594 U.S. ____ (July 19, 2021). Jones claims that the circuit court disregarded this order when it denied his motion for reconsideration.

The United States Supreme Court order is inapplicable on its face. This case does not involve a petition for a writ of certiorari to the United State Supreme Court. Jones’s conclusory assertion that a petition for a writ of certiorari “is the same thing as a notice of appeal” and, therefore, warrants the same 150-day extension falls short. *See State v. Pettit*, 171 Wis. 2d 627,

646-47, 492 N.W.2d 633 (Ct. App. 1992) (discussing that the court of appeals need not address undeveloped arguments). The circuit court properly exercised its discretion when it denied Jones’s request that it reconsider and reissue its decision denying his 2020 postconviction motion.

We further conclude that Jones’s claim that he was prevented from filing a timely appeal due to the COVID-19 lockdown in prison, which prevented him from accessing the prison law library, fails because he did not raise it in the motion underlying this appeal. We do not address issues raised for the first time on appeal. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. Insofar as Jones asserts that this court can excuse a missed notice of appeal deadline pursuant to WIS. STAT. RULE 809.82, he is wrong. RULE 809.82(2)(b) makes clear that the time for filing a notice of appeal “may not be enlarged.”

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals