COURT OF APPEALS
DECISION
DATED AND FILED

August 7, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP1863 **Cir. Ct. No. 2004CF89**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL LAWRENCE HANSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Marinette County: JAY N. CONLEY, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Daniel Hanson appeals an order denying his WIS. STAT. § 974.06[1] motion for postconviction relief. Because Hanson failed to

[1] All references to the Wisconsin Statutes are to the 2009-10 version.

provide this court with a transcript of the postconviction motion hearing, we must assume the missing transcript supports the circuit court's decision. In any event, we conclude Hanson's claims are procedurally barred and affirm the order.

BACKGROUND

¶2 In 2006, Hanson was convicted upon his no contest plea of operating while intoxicated, as a fifth or subsequent offense. On direct appeal, Hanson's counsel filed a no-merit report pursuant to WIS. STAT. RULE 809.32, concluding there was no arguable basis for withdrawing Hanson's no contest plea or for challenging the partial denial of his motion for sentence credit. Hanson filed a response arguing that he relied on false information given to him by his trial attorney; the police lacked probable cause to request a blood draw; insufficient evidence was presented at the preliminary hearing to support the bindover; the drunk driving charge was not transactionally related to the charges proved at the preliminary hearing; and he was entitled to additional sentence credit. Counsel filed a supplemental no-merit report addressing Hanson's sentence credit claim. Upon our independent review of the record as mandated by ***Anders v. California***, 386 U.S. 738 (1967), we concluded there was no arguable basis for appeal and summarily affirmed the judgment.

¶3 Hanson subsequently filed several pro se motions for postconviction relief. In 2007, he filed a petition for modification of his bifurcated sentence and also petitioned for a sentence adjustment. His requests were denied. Hanson's extended supervision was subsequently revoked and, on February 4, 2009, the court ordered Hanson reconfined for two years and four days. In May 2010, Hanson again petitioned for sentence adjustment and the circuit court denied that request.

¶4 In May 2011, Hanson filed the underlying WIS. STAT. § 974.06 postconviction motion. Hanson argued that he was denied the effective assistance of trial and appellate counsel; he was unlawfully arrested; his plea was coerced; evidence was unlawfully suppressed; the State used perjured evidence; he was twice placed in jeopardy; the sentencing court lacked jurisdiction to impose sentence; the prosecutor failed to disclose exculpatory evidence; and he had new evidence. The circuit court denied the motion after a hearing and this appeal follows.

DISCUSSION

¶5 In its order denying Hanson's WIS. STAT. § 974.06 motion, the court determined that because Hanson failed to demonstrate he was in custody under the sentence he wished to attack, the court lacked authority to decide the issues raised. Although Hanson contends the court erred by denying his motion, he did not include the transcript of the postconviction motion hearing. We must, therefore, assume that the transcript supports the circuit court's determination. *See* ***State v. McAttee***, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774 ("It is the appellant's responsibility to ensure completion of the appellate record and 'when an appellate record is incomplete in connection with an issue raised by the appellant, we must assume that the missing material supports the trial court's ruling.'") (citation omitted).

¶6 In any event, we conclude Hanson's claims are barred by WIS. STAT. § 974.06(4) and ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Successive motions and appeals are procedurally barred unless the defendant can show a sufficient reason why the newly alleged errors were not previously raised. ***Id.*** at 185. The bar to serial litigation may also apply when the

direct appeal was conducted pursuant to the no-merit procedures of WIS. STAT. RULE 809.32. ***State v. Tillman***, 2005 WI App 71, ¶¶19-20, 281 Wis. 2d 157, 696 N.W.2d 574. Absent a sufficient reason for doing so, a defendant may not raise issues in later proceedings that could have been raised in the no-merit proceeding if the no-merit procedures were followed and the court has sufficient confidence in the outcome of the no-merit proceeding to warrant application of the procedural bar. ***Id.***, ¶20. Whether an appeal is procedurally barred by a prior no-merit proceeding is a question of law we review independently. ***Id.***, ¶14.

¶7 Hanson has not demonstrated that his no-merit appeal was procedurally inadequate. Here, as in ***Tillman***, Hanson's counsel filed a no-merit report and Hanson responded to it. Counsel additionally filed a supplemental no-merit report. We conducted an independent review of the record and addressed the issues that Hanson raised. Our discussion reflects that the no-merit review conducted by this court represented a full and conscientious examination of the record. Accordingly, our resolution of the no-merit proceeding carries a sufficient degree of confidence warranting application of the procedural bar to Hanson's claims.

¶8 Several of the issues raised in Hanson's postconviction motion were addressed by this court during the no-merit review on direct appeal. Those issues cannot be relitigated no matter how artfully they are rephrased. ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991). To the extent Hanson attempted to present new issues, he has not demonstrated a sufficient reason for failing to raise them earlier, and the motion's mere reference to "new evidence" does not justify circumventing the procedural bar.

By the Court.—Order affirmed.

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