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DISTRICT II

April 29, 2015

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

2014AP1615	State of Wisconsin v. Jacob C. Turner (L.C. #2010CF392)
2014AP1616	State of Wisconsin v. Jacob C. Turner (L.C. #2011CF193)

Before Neubauer, P.J., Reilly and Gundrum, JJ.

In these consolidated cases, Jacob C. Turner appeals pro se from an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

In June 2011, Turner was convicted in Walworth county case No. 2010CF392 of attempted strangulation and suffocation, disorderly conduct, and misdemeanor battery. The circuit court withheld sentence and placed Turner on probation for a total of three years with six months of conditional jail time.

Represented by counsel, Turner filed a motion for a new trial on the ground that the circuit court erred in seating a juror who had not been summoned for service. The circuit court denied the motion. Turner appealed, and this court affirmed. *State v. Turner*, 2013 WI App 23, 346 Wis. 2d 229, 827 N.W.2d 654.

In April 2014, Turner filed a pro se motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he argued that the circuit court lacked subject matter jurisdiction to convict him of attempted strangulation and suffocation because it is not a crime. Accordingly, he asked to vacate that conviction. He also asked to vacate a conviction in a related case—Walworth county case No. 2011CF193—for felony bail jumping, which was based on his violation of bond while out on bail in Walworth county case No. 2010CF392. Turner reasoned that if attempted strangulation and suffocation is not a crime, then he would not have been on bond and could not have been charged with felony bail jumping. The circuit court denied the motion. This appeal follows.

On appeal, Turner renews his argument that attempted strangulation and suffocation is not a crime. In addition, he raises a number of new claims including ineffective assistance of counsel, prosecutorial misconduct, and double jeopardy.

We generally do not consider issues raised for the first time on appeal, and we decline to do so here. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727; *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997).

As for Turner’s argument that attempted strangulation and suffocation is not a crime, we are not persuaded. Strangulation and suffocation is a felony. WIS. STAT. § 940.235. “Under [WIS. STAT.] § 939.32(1), all felonies may be charged as attempted crimes, except for felonies excluded by statute or by case law.” *State v. Henning*, 2013 WI App 15, ¶13, 346 Wis. 2d 246, 828 N.W.2d 235. The “except” language in *Henning* refers to those situations where the crime is not amenable to be charged as an attempt because it does not include a state of mind element. *See id.*, ¶¶13-14. This is not one of those situations, as the crime of strangulation and suffocation clearly possesses a state of mind element. *See* WIS JI-CRIMINAL 1255; Sec. 940.235. Therefore, attempted strangulation and suffocation is a crime, and the circuit court properly denied Turner’s motion.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals