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

2014AP1634

State of Wisconsin v. Ricky Earl Rouse
(L.C. #2005CF001647)

Before Kessler, Brennan, JJ., and Thomas Cane, Reserved Judge.

Ricky Earl Rouse, *pro se*, appeals the order denying his WIS. STAT. § 974.06 (2013-14) motion for postconviction relief.¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1).

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

Background

In 2005, Rouse was convicted of first-degree reckless homicide. The charge stemmed from an incident in which Rouse shot a man in the chest, killing him.

According to the criminal complaint, Rouse's brother was playing basketball with the victim. Rouse's brother fouled the victim, who told him to stop. Rouse ran home, got a gun, returned, and pointed it at the victim from a distance of six or seven feet. Rouse then shot the victim in the chest.

Rouse admitted to police that he shot the victim. He told police that he was angry and nervous and that his finger was on the trigger, but that he did not remember pulling the trigger. He later told police that another man, Deron Love, had grabbed the hand his gun was in and the gun went off.

Rouse was charged with first-degree reckless homicide while armed and with being a felon in possession of a firearm. He entered a plea of not guilty by reason of mental defect or disease (NGI).

The circuit court ordered competency and mental health evaluations. Following an examination, Rouse's trial counsel informed the court that the evaluating doctor had found Rouse competent to stand trial, that counsel agreed with the doctor's conclusion, and that Rouse did not wish to challenge the report. Rouse's trial counsel further advised the court that the doctor had concluded the evidence did not support an NGI plea, that Rouse did not wish to seek appointment of another doctor, and that Rouse would withdraw the NGI plea. Rouse confirmed for the court that he did not want to challenge the finding that he was competent to stand trial and

that he wanted to withdraw the NGI plea. The circuit court found Rouse was competent to stand trial and Rouse's NGI plea was withdrawn.²

Pursuant to plea negotiations, Rouse pled guilty to first-degree reckless homicide. In exchange, the State agreed to dismiss the "while armed" penalty enhancer and the charge of felon in possession of a firearm. The circuit court accepted Rouse's plea and sentenced him to forty years of imprisonment, comprised of twenty-five years of initial confinement and fifteen years of extended supervision.³

In 2009, Rouse, *pro se*, filed a motion to vacate the DNA surcharge that was imposed at sentencing. The circuit court granted the motion and issued an amended judgment of conviction.⁴

In 2014, Rouse, *pro se*, filed the motion for postconviction relief underlying this appeal. He sought an order vacating his conviction and sentence on grounds that his trial counsel was ineffective. The extent of Rouse's argument as to his trial counsel's ineffectiveness was as follows:

Mr. Rouse[']s attorney was ineffective because she did not afford him the best defense possible. Mr. Rouse requested that she put in a motion to have his case dropped to a lesser included charge and she did not do that. Mr. Rouse[']s counsel did not effectively argue the history of Mr. Rouse[']s mental health and conditions

² The Honorable Jeffrey A. Wagner presided over these proceedings.

³ The Honorable Charles F. Kahn, Jr., presided over the plea and sentencing proceedings.

⁴ The Honorable Carl Ashley entered the order granting Rouse's motion to vacate the DNA surcharge.

which [he] has been through to help contribute to his state of mind at the time.

The circuit court denied the motion without a hearing.⁵ In doing so, the court explained:

The defendant alleges that counsel did not afford him the best defense possible, yet he has not identified any specific defense that counsel failed to afford him. In any event, the defendant waived his opportunity to raise defenses by virtue of his guilty plea in this case. The defendant also alleges that [he requested that] “she [i.e., trial counsel] put in a motion to have his case dropped to a lesser[-]included charge and she did not do that.” This claim also fails for lack of specificity. Moreover, the plea agreement in this case called for the defendant to plead guilty to the original homicide charge, and in exchange, the while armed penalty enhancer and a second count of felon in possession of a firearm were dismissed. Finally, the defendant asserts that counsel did not effectively argue his mental health history and the conditions he has been through to explain his state of mind at the time of the offense. The record is replete with information about the defendant’s troubling background and mental health history, and the sentencing court was well aware of these factors at the time of sentencing. The defendant has not demonstrated what more counsel should have argued about these factors or how it would have affected the outcome of the sentencing hearing.

Rouse now appeals.

Discussion

The circuit court may deny a postconviction motion without a hearing if the motion fails to raise questions of fact or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. *State v. Allen*, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433. Whether a WIS. STAT. § 974.06 motion is sufficient on its face to entitle a defendant to an evidentiary hearing on his or her ineffective assistance of counsel

⁵ The Honorable Stephanie G. Rothstein entered the order denying Rouse’s postconviction motion.

claim is a question of law that appellate courts review *de novo*. *State v. Balliette*, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334.

As set forth above, the essence of Rouse’s motion consisted of three sentences:

- Mr. Rouse[’s] attorney was ineffective because she did not afford him the best defense possible.
- Mr. Rouse requested that she put in a motion to have his case dropped to a lesser included charge and she did not do that.
- Mr. Rouse[’s] counsel did not effectively argue the history of Mr. Rouse[’s] mental health and conditions which [he] has been through to help contribute to his state of mind at the time.

(Formatting altered.)

These conclusory allegations fall woefully short of establishing the necessary ““who, what, where, when, why, and how”” details required in a postconviction motion. *See id.*, ¶59 (citation omitted). To the extent Rouse attempts to augment his allegations and make new arguments on appeal, we will not consider this new information. *See Allen*, 274 Wis. 2d 568, ¶27 (We review the allegations contained in the four corners of a postconviction motion and not any additional allegations contained in appellate briefing.); *see also Wisconsin Dep’t of Taxation v. Scherffius*, 62 Wis. 2d 687, 696-97, 215 N.W.2d 547 (1974) (“[A]s a matter of judicial policy, we decline to consider legal arguments that are posed for the first time on appeal and which were not raised in the [circuit] court.”). Consequently, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals