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June 1, 2016

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

2015AP995

State of Wisconsin v. James R. Rzeplinski (L.C. #2012CF236)

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

James R. Rzeplinski appeals pro se from circuit court orders denying his WIS. STAT. § 974.06 (2013-14)¹ motion for postconviction relief and motion for reconsideration. 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. We affirm.

In July 2012, Rzeplinski entered guilty pleas to one count of strangulation and suffocation and one count of false imprisonment. The circuit court placed him on probation for

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

three years, consecutive to another sentence he was serving. Rzeplinski did not pursue a direct appeal from his conviction.

In March 2015, Rzeplinski filed a WIS. STAT. § 974.06 motion for postconviction relief. The circuit court denied the motion without a hearing. Rzeplinski filed a motion for reconsideration, which the court also summarily denied. This appeal follows.

On appeal, Rzeplinski contends that the circuit court erred in denying his motions without a hearing. He argues that he is entitled to postconviction relief because (1) he was sentenced on inaccurate information; (2) he was convicted on insufficient evidence; and (3) he was denied the constitutional right to confrontation when the victim did not testify at his preliminary hearing.²

Whether a postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is subject to a mixed standard of review. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. First, we determine whether the motion alleges sufficient facts that, if true, would entitle the defendant to relief. *Id.* This is a question of law that we review de novo. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). If the motion raises such facts, the circuit court must hold an evidentiary hearing. *Id.* However, if the motion does not raise facts sufficient to entitle the defendant to relief, “or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.” *Allen*, 274

² We do not address any arguments raised by Rzeplinski which could not be advanced in his WIS. STAT. § 974.06 motion. See *State v. Balliette*, 2011 WI 79, ¶34 n.4, 336 Wis. 2d 358, 805 N.W.2d 334 (a defendant may raise only jurisdictional or constitutional issues in a § 974.06 motion).

Wis. 2d 568, ¶9. We review the court's discretionary decision under the deferential erroneous exercise of discretion standard. *Id.*

Rzeplinski's first argument that he was sentenced on inaccurate information stems from his claim that the victim suffers from mental health and alcohol problems and therefore lacks credibility. The problem with this argument is that the circuit court did not rely upon anything the victim said in sentencing Rzeplinski. Rather, the court relied upon Rzeplinski's admission that he choked the victim with both hands and prevented her from leaving the dwelling they were in. That admission came during the following exchange at the plea hearing:

[PROSECUTOR]: Your Honor, the facts would show that on April 25th, [the victim] complained to the Elkhorn police department that she had got in a fight, an argument with the defendant. He strangled her by choking her with both hands causing her to feel light-headed because she could not breathe, was afraid she was going to die. She also attempted to leave the dwelling and he would not permit it. Kept her there without her permission.

THE COURT: That's first strangulation and secondly the false imprisonment.

[PROSECUTOR]: Correct.

THE COURT: Mr. Johnson, any argument with those facts?

[DEFENSE COUNSEL]: No.

THE COURT: Mr. Rzeplinski, do you understand why you're charged with strangulation and then false imprisonment? She wanted to leave but you wouldn't let her. Do you understand?

THE DEFENDANT: Yes.

THE COURT: Find there is a factual basis. I believe the defendant understands the facts as they relate to his case, find the defendant guilty, enter a judgment of conviction.

Given this record, there was no need to hold a hearing on Rzeplinski's first argument.

As for Rzeplinski's remaining arguments regarding the sufficiency of the evidence and the right to confrontation, he forfeited them by virtue of his guilty pleas. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (a valid guilty plea forfeits all nonjurisdictional defects, including constitutional claims); *Rafferty v. State*, 29 Wis. 2d 470, 479, 138 N.W.2d 741 (1966) (by entering a plea, a defendant not only waives any objection to the legality of the evidence, but also to the quantum of it). Moreover, there is no right to confrontation at a preliminary hearing. *State v. O'Brien*, 2014 WI 54, ¶30, 354 Wis. 2d 753, 850 N.W.2d 8.

For these reasons, we are satisfied that the circuit court properly denied Rzeplinski's motions without a hearing. Accordingly, we affirm.³

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

³ To the extent we have not addressed any other argument raised by Rzeplinski on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).