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DISTRICT IV

June 17, 2016

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

2015AP1260-CR

State of Wisconsin v. Christopher C. Bowers (L.C. # 2012CF25)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Christopher Bowers appeals a judgment convicting him of two counts of second-degree sexual assault of a child and an order denying his postconviction motion. He raises five issues in support of a request to vacate his sentence and remand for a psychological evaluation and resentencing. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ For the reasons discussed below, we reject each of the five issues that Bowers raises on appeal, and affirm.

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

Bowers' first three issues involve overlapping claims of ineffective assistance of counsel relating to competency issues. Specifically, Bowers contends that trial counsel should have sought a competency evaluation and a competency hearing to determine whether Bowers was competent to proceed pursuant to WIS. STAT. § 971.14, and also should have obtained an NGI evaluation pursuant to WIS. STAT. § 971.15 to determine Bowers' mental state at the time he committed the offenses. Aside from the fact that the remedy for these ineffective assistance of counsel claims would be plea withdrawal rather than the resentencing Bowers is asking for, the record made at Bowers' postconviction hearing does not provide a factual basis for the claims.

Trial counsel testified, and the circuit court found, that counsel had no difficulty communicating with Bowers, and no reason to question Bowers' understanding of the proceedings or his ability to assist in his defense, based upon numerous discussions counsel had with Bowers about his case. Counsel similarly had no basis to pursue an NGI plea, because Bowers had attributed his offenses to drug use, not psychological issues, and the only psychological issues counsel was aware of Bowers having related to his need for sexual offender treatment. Therefore, counsel's performance was not deficient.

Moreover, even if counsel had sought a competency hearing and/or NGI evaluation, Bowers has not provided any information that would show he would have prevailed on either issue—such as an expert opinion stating that he was not, in fact, competent either at the time of the offenses or during the circuit court proceedings. To the contrary, Bowers attached several summaries of mental health contacts with prison staff that actually undermine his claims of incompetency. For instance, the summaries noted that Bowers had never seen a mental health professional prior to his incarceration and that he was exaggerating his claims of serious mental illness; that Bowers' primary diagnosis was of antisocial personality disorder—which does not

qualify as mental disease or defect for NGI purposes—and that the majority of Bowers’ mental health problems appeared to be tied to his personality structure and lack of coping skills; and that Bowers had not been exhibiting any current or recent signs of psychosis. Therefore, Bowers also fails to satisfy the prejudice element of his ineffective assistance claims.

Bowers’ fourth claim is that the circuit court erroneously exercised its sentencing discretion by failing to consider his mental health and substance abuse issues. Again, the record fails to support his claim. At the sentencing hearing, the court stated that it had read the PSI, which outlined Bowers’ need for sex offender treatment, anger management, and substance abuse, and noted that Bowers had “current mental health needs, but no serious mental health illness diagnosis.” The court further acknowledged Bowers’ need for “very aggressive, ongoing treatment” as set forth in the PSI, but concluded that Bowers needed to be confined because he presented a substantial risk to the community.

Bowers’ fifth and final claim is that the circuit court erroneously exercised its discretion by failing “to consider that the victims and state prosecutor did not wish for Bowers to serve any additional time.” However, the fact that the circuit court failed to *follow* a joint recommendation from the parties and victims that the sentences in this case be imposed concurrent to another sentence already being served, does not mean that the court failed to *consider* the position of the victims and the State. The court explicitly explained why it was rejecting the recommendation for concurrent time, because such a disposition would essentially attach no consequences for the sexual assaults in this case, and would provide no additional control beyond the previously imposed sentence structure. Bowers’ complaint that the circuit court made the sentences consecutive based “on its desire to punish Bowers” does not present a basis for relief, because punishment is one of the most basic goals that a circuit court may attempt to achieve.

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals