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DISTRICT IV

February 24, 2017

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

2016AP648

State of Wisconsin v. Marcus E. Sturdevant (L.C. # 1994CF81)

Before Lundsten, Sherman and Blanchard, JJ.

Marcus Sturdevant appeals from orders denying his WIS. STAT. § 974.06 (2015-16)¹ postconviction motion without a hearing and denying 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 summarily affirm.

In 1994, Sturdevant was convicted on his no-contest pleas to three counts of first-degree sexual assault of a child. In 2006, Sturdevant filed a postconviction motion seeking to withdraw

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

his pleas on grounds that he was not aware at the time he entered his pleas that he would be subject to the annual sex offender registration fee. The circuit court denied the motion. Sturdevant then filed another postconviction motion, seeking to withdraw his pleas on grounds his trial counsel had been ineffective. The circuit court denied the motion without a hearing. We affirmed on appeal, concluding that Sturdevant's motion was barred by law governing motions under WIS. STAT. § 974.06(4) because Sturdevant did not give a sufficient reason why he did not raise his claims in his first § 974.06 motion. See *State ex rel. Dismuke v. Kolb*, 149 Wis. 2d 270, 274, 441 N.W.2d 253 (Ct. App. 1989) (explaining that a defendant cannot pursue a second § 974.06 motion unless defendant shows a sufficient reason for not raising the new claims in the first motion).

Sturdevant filed the WIS. STAT. § 974.06 motion underlying this appeal on January 4, 2016. Sturdevant argued that he was deprived of his right to counsel at the preliminary hearing, and that his trial counsel was ineffective by failing to: (1) move to dismiss one count of child sexual assault in the criminal complaint based on lack of jurisdiction; (2) obtain discovery, including the victim's hospital records; and (3) move to dismiss two of the charged child sexual assault counts as multiplicitous. Sturdevant argued that he was not required to show a sufficient reason for having failed to raise those arguments previously because Sturdevant had not pursued a direct postconviction motion or appeal following his conviction under WIS. STAT. § 974.02 or WIS. STAT. RULE 809.30. He also argued that he should not be procedurally barred from raising issues of constitutional magnitude that were not raised in a previous postconviction motion. The circuit court denied the motion without a hearing, finding that the claims were procedurally barred.

Sturdevant moved for reconsideration, contending that his lack of education or legal training is a sufficient reason for failing to raise his current arguments in his prior postconviction motions. He argued that his lack of education rendered him incompetent to pursue these issues earlier, and that under *State v. Debra A.E.*, 188 Wis. 2d 111, 135, 523 N.W.2d 727, this is a sufficient reason to overcome the procedural bar. *See id.* (“Defendants who are incompetent at the time they seek postconviction relief should, after regaining competency, be allowed to raise issues at a later proceeding that could not have been raised earlier because of incompetency.”). The circuit court denied reconsideration.

On appeal, Sturdevant pursues his claim that his lack of education or legal training rendered him incompetent, establishing a sufficient reason for failing to pursue his claims earlier under *Debra A.E.* The State responds that Sturdevant has not shown a sufficient reason to overcome the procedural bar because pro se litigants are generally required to comply with procedural standards, *see Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992), and cites Sturdevant’s previous filings in the circuit court as evidence of his legal ability and understanding. Sturdevant filed a letter in lieu of a reply brief, asserting that his claims are not barred because they were not previously raised and are of constitutional magnitude.

We conclude that Sturdevant’s claims are procedurally barred. Sturdevant was required to set forth a sufficient reason for failing to raise his current constitutional claims in his prior postconviction motions. *See* WIS. STAT. § 974.06(1) (providing that § 974.06 motions are limited to constitutional and jurisdictional claims); *State v. Romero-Georgana*, 2014 WI 83, ¶5, 360 Wis. 2d 522, 849 N.W.2d 668 (explaining that a defendant filing a subsequent WIS. STAT. § 974.06 motion must show a sufficient reason for not raising claims in previous motions). We are not persuaded by Sturdevant’s argument that his lack of education or legal training rendered

him incompetent when he pursued his prior postconviction motions. Nothing in the record suggests that Sturdevant lacked the minimal competency needed for effective self-representation. See *State v. Klessig*, 211 Wis. 2d 194, 212, 564 N.W.2d 716 (1997).

Because Sturdevant has not established a sufficient reason for not previously raising the issues raised in his current WIS. STAT. § 974.06 motion, the motion is procedurally barred.

Therefore,

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

Diane M. Fremgen
Clerk of Court of Appeals