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DISTRICT II

November 8, 2017

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

2016AP2224

State of Wisconsin v. Shannon L. Rogler (L.C. #2013CF682)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Shannon L. Rogler appeals pro se from an order denying his motion for postconviction relief under WIS. STAT. § 974.06(4) (2015-16).¹ Based upon our review of the briefs and record,

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

we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the order of the circuit court.

In 2015, Rogler pled guilty to five charges related to an armed standoff with police, two of which were charges for first-degree recklessly endangering safety with a dangerous weapon. The circuit court sentenced him to a total of forty years of initial confinement and twenty-seven years of extended supervision.

Rogler's appellate counsel subsequently filed a no-merit report. Despite receiving a copy of the report and being informed of his right to respond, Rogler did not respond. In October 2016, we affirmed Rogler's judgment of conviction and sentence, concluding there were no issues of arguable merit generally in Rogler's case and specifically as to the entry of Rogler's guilty pleas and whether Rogler received effective assistance of counsel. *State v. Rogler*, No. 2016AP63-CRNM, unpublished op. and order (WI App Oct. 5, 2016). We accepted counsel's no-merit report and relieved counsel of further representation.

Approximately two weeks after the release of our no-merit decision, Rogler filed a motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he raised three issues: (1) insufficient factual basis for his plea to first-degree recklessly endangering safety, and relatedly, his plea was not knowing and voluntary because he did not understand the elements of the crime and was not aware a factual basis was lacking; (2) trial counsel performed ineffectively by coercing him to plead to the recklessly endangering safety charges, and (3) counsel performed ineffectively by insufficiently presenting Rogler's "good character and social history" at

sentencing.² Noting our no-merit decision of October 2016, the circuit court denied Rogler's motion without a hearing. This appeal follows, in which Rogler renews the claims he made in his motion for postconviction relief and contends the circuit court erred in denying the motion.

Because “[w]e need finality in our litigation,” any claim that could have been raised by a defendant in a prior postconviction motion or on direct appeal cannot form the basis for a subsequent motion under WIS. STAT. § 974.06 unless the defendant provides a sufficient reason for failing to raise the claim earlier. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994). This procedural bar applies even if the direct appeal was a no-merit appeal. See *State v. Tillman*, 2005 WI App 71, ¶19, 281 Wis. 2d 157, 696 N.W.2d 574. Furthermore, a defendant may not raise issues that previously were addressed in a no-merit decision. *Id.*

Rogler's postconviction motion is procedurally barred. We already concluded in our October 2016 no-merit decision that there are no issues of arguable merit related to Rogler's guilty pleas. We addressed whether Rogler's pleas were knowingly, voluntarily, and intelligently entered. *Rogler*, No. 2016AP63-CRNM, unpublished op. and order at 2-3. We concluded that “the record shows that the circuit court engaged in a colloquy with Rogler that satisfied the applicable requirements of WIS. STAT. § 971.08(1) and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.” *Rogler*, No. 2016AP63-CRNM, unpublished op. and order at 2. We also specifically concluded that there was no issue of arguable merit as to whether Rogler's trial counsel performed ineffectively. *Id.* at 3. Rogler cannot raise these issues again now. See *Tillman*, 281 Wis. 2d 157, ¶19. Furthermore, to the extent Rogler's contention

² Rogler alternatively requested sentence modification. That request also was denied by the circuit court. Rogler has abandoned that issue on appeal.

that there was an insufficient factual basis to support his plea possibly could be considered a new issue, he makes no attempt to provide a reason for why he did not raise it earlier. The circuit court did not err in denying Rogler's postconviction 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.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals