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December 15, 2017

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

2016AP2288	State of Wisconsin v. Alain R. Welsh (L.C. # 2000CF2727)
2016AP2289	State of Wisconsin v. Alain R. Welsh (L.C. # 2000CF5409)

Before Blanchard, Kloppenburg and Fitzpatrick, JJ.

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).

Alain Welsh appeals from three criminal judgments and an order denying his motions for sentence modification and other postconviction relief. After reviewing the record, we conclude

at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm for the reasons discussed below.

Welsh raises a series of complaints about the circuit court proceedings in these matters. However, his brief fails to develop any coherent arguments that apply relevant legal authority to the facts of record, and instead relies largely upon conclusory assertions and citations to inapplicable case law to demand relief. *See generally* WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for briefs). While we will make some allowances for the failings of *pro se* briefs, “[w]e cannot serve as both advocate and judge,” and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992); *see also, State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999). We therefore limit our discussion to a broad overview of why Welsh has not established a right to any of the relief he seeks in his enumerated statement of issues. Any additional issues that we do not explicitly address are denied based on the lack of a developed legal argument. *See Libertarian Party of Wis. v. State*, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack “sufficient merit to warrant individual attention”).

First, Welsh asserts that his *Miranda*² rights were not read to him at the time of his arrest in Milwaukee County Case No. 2000CF2727. He additionally claims that trial counsel provided ineffective assistance by failing to raise this issue. However, Welsh waived his right to directly

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

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

challenge his statement to police by entering pleas without first filing a suppression motion, and his allegations are insufficient to show that counsel provided ineffective assistance in failing to file a suppression motion.

Second, Welsh asserts that counts two and five in Milwaukee County Case No. 2000CF2727 violated the Double Jeopardy Clause. However, although the charges were identical in law in that they were both for false imprisonment, they were not identical in fact: they involved different victims. *See generally State v. Anderson*, 219 Wis. 2d 739, 748-49, 580 N.W.2d 329 (1998) (setting forth test for multiplicity claims under the Double Jeopardy Clause).

Third, Welsh asserts that counts one and three in Milwaukee County Case No. 2000CF5409 violated the Double Jeopardy Clause. Again, although the charges were identical in law in that they were both for reckless endangerment, they were not identical in fact and involved different victims.

Fourth, Welsh asserts that the transcripts show that the circuit court stayed his sentences, and argues that the circuit court violated the ex post facto clause and his due process right to be sentenced based upon accurate information by failing to amend the judgments to reflect that the sentences were stayed. This issue is procedurally barred because it was previously raised in a sentence modification motion that Welsh filed in 2008.

Fifth, Welsh asserts that the circuit court was not authorized to impose conditions on his terms of extended supervision. However, WIS. STAT. § 973.01(5) expressly authorizes the court to impose conditions on extended supervision.

Sixth, Welsh asserts that appellate counsel provided ineffective assistance in both cases by closing his file without appealing. As we have just explained, however, none of the issues that Welsh contends should have been raised have merit, and therefore this could not have been prejudicial.

IT IS ORDERED that the judgments and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Diane M. Fremgen
Clerk of Court of Appeals