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DISTRICT III

April 25, 2018

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

2017AP182	State of Wisconsin v. Christopher S. Streckenbach
2017AP183	(L. C. Nos. 2008CF96, 2008CF128)

Before Stark, P.J., Hruz and Seidl, 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).

Christopher Streckenbach, pro se, appeals an order denying his postconviction motion to vacate or modify sentences imposed in 2008 for two counts of sexually assaulting children and two counts of unlawfully photographing children. The circuit court denied the motion without an evidentiary hearing. Streckenbach argues: (1) his claims should not be procedurally barred because he was abandoned by his attorney in his initial appeal; (2) his postconviction counsel

was ineffective for failing to argue ineffective assistance of trial counsel based on trial counsel's failure to correct inaccuracies in the presentence investigation report (PSI); and (3) he was prejudiced by the circuit court conducting a non-evidentiary hearing one day earlier than the date indicated on the notice of hearing. Upon our review of the parties' briefs and the record at conference, we conclude the order should be summarily affirmed.

In Streckenbach's initial postconviction motion and appeal, he was represented by attorney Catherine Canright. Canright argued Streckenbach should be allowed to withdraw his no-contest pleas based on defects in the plea colloquy. By summary order dated August 30, 2011, this court affirmed Streckenbach's conviction. *State v. Streckenbach*, Nos. 2010AP2344-CR and 2010AP2345-CR unpublished slip op. (WI App. Aug. 30, 2011). Canright died two months later without having filed a petition for review. The Wisconsin Supreme Court later granted Streckenbach's petition for a writ of habeas corpus (Appeal No. 2011AP2922-W), and granted him the right to file a petition for review. However, it denied the petition for review.

In 2014, Streckenbach filed a pro se postconviction motion incorrectly captioned as a motion for sentence modification, in which he alleged inaccuracies in the PSI and ineffective assistance of trial counsel for failure to address those flaws. The circuit court denied the motion and Streckenbach appealed. This court noted the motion should have been filed under WIS. STAT. § 974.06 (2015-16),¹ due to the nature of his arguments. This court concluded the motion was procedurally barred by the rule against successive postconviction motions set out in § 974.06 and *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).

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

We conclude Streckenbach's present motion is also procedurally barred. Whether the *Escalona-Naranjo* procedural bar applies is a question of law that we review de novo. *State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997). When a postconviction motion is brought after a direct appeal or postconviction motion, the motion is barred unless the moving party provides sufficient reason for his or her failure to have raised the issue in previous postconviction motions. *Escalona-Naranjo*, 185 Wis. 2d at 181-82. A postconviction motion may be denied without an evidentiary hearing unless the motion alleges sufficient reasons to overcome the procedural bar. *State v. Allen*, 2010 WI 89, ¶46, 328 Wis. 2d 1, 786 N.W.2d 124.

Streckenbach's motion alleges abandonment by his postconviction counsel. However, he does not show how his counsel's failure to file a petition for review relates to issues not raised in his initial appeal. More importantly, he does not provide any reason for his failing to raise the issue in his 2014 pro se postconviction motion and appeal.

Streckenbach next argues that his postconviction counsel was ineffective for failing to raise ineffective assistance of trial counsel based on trial counsel's failure to correct inaccuracies in the PSI.² This argument echoes the argument Streckenbach raised in his 2014 pro se postconviction motion. That issue cannot be relitigated no matter how artfully it is rephrased. *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Finally, Streckenbach complains that the non-evidentiary hearing was conducted the day before the date it was noticed. Streckenbach participated in the hearing and asserted he had subpoenaed two people to testify on the following day. The circuit court noted Streckenbach's

² At no point does Streckenbach identify specific inaccuracies of the PSI.

motion failed to allege sufficient facts that, if true, entitled him to a hearing. Nonetheless, it gave Streckenbach the opportunity to make an offer of proof concerning the proposed witness testimony and to flesh out the conclusory allegations contained in his motion. Streckenbach explained his witnesses would have provided documentation of his appellate attorney's illness and death. The court stated it understood those facts from Streckenbach's motion. Because Streckenbach's motion and his offer of proof were not sufficient to require an evidentiary hearing, Streckenbach was not prejudiced by the circuit court's conducting the non-evidentiary hearing one day early.

IT IS ORDERED that the order is summarily affirmed.

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

Sheila T. Reiff
Clerk of Court of Appeals