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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

July 7, 2020

To:

Hon. Gregory B. Huber
Circuit Court Judge
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Theresa Wetzsteon
District Attorney
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403-5554

Shirley Lang
Clerk of Circuit Court
Marathon County Courthouse
500 Forest St.
Wausau, WI 54403

Freeman E. Bell 408567
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

Kara Lynn Janson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2018AP2172 State of Wisconsin v. Freeman E. Bell (L.C. No. 2003CF360)

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).

Freeman Bell, pro se, appeals from the denial of his fourth WIS. STAT. § 974.06 (2017-18)[1] postconviction motion. In 2004, Bell was convicted of possession of a short-barreled shotgun. In his latest postconviction motion, Bell argues the State committed a fraud on the

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

court when he was charged with the crime because the assistant district attorney who signed the criminal complaint did so above a signature block that listed the district attorney's name. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Bell's conviction stems from a September 2, 2003 traffic stop. Bell was a passenger in a vehicle that police pulled over after the driver "flicked a lit cigarette out of the window." The driver verbally identified himself, but he provided a false name. He also told police he did not have a driver's license at that time. In plain view within the vehicle, police observed an open bottle of whiskey, ammunition, and a gun case. Police also smelled an odor of marijuana coming from the vehicle. During a search of the vehicle, police found cocaine, marijuana, as well as a shotgun with a barrel and stock that had been sawed short. The gun case contained a Colt AR-15 rifle with two loaded thirty-round clips. Also found in the vehicle were camouflage masks, gloves, and bandanas.

Bell was charged with four drug-related counts and one count of possession of a short-barreled shotgun, as a party to a crime. The short-barreled shotgun had been used in an armed bank robbery in Racine, for which Bell was later convicted. In the present case, a jury found Bell guilty of possessing a short-barreled shotgun as a party to a crime, and Bell was acquitted of the drug charges.

Bell pursued a direct appeal, challenging the sufficiency of the evidence to support his conviction. We rejected his claim and affirmed the conviction.

On January 28, 2008, Bell filed his first pro se WIS. STAT. § 974.06 postconviction motion, alleging a speedy-trial violation and ineffective assistance of his trial and postconviction counsel. We summarily affirmed the circuit court's denial of the motion without a hearing.

Bell filed his second pro se WIS. STAT. § 974.06 motion on August 21, 2009. Bell argued he was the subject of a discriminatory arrest, his trial counsel had a conflict of interest, and the prosecutor knowingly elicited false testimony. The circuit court denied the motion, and there is no indication Bell appealed that order.

On November 1, 2010, Bell filed his third pro se WIS. STAT. § 974.06 motion, arguing that the circuit court had lacked subject matter jurisdiction because the criminal complaint and Information he received were unsigned. He also alleged his attorney was ineffective for not raising that issue. The court denied the motion, and we affirmed, concluding Bell was procedurally barred from raising the issues. We also noted that Bell had alleged for the first time on appeal that, at some date after he was initially charged, the district attorney forged the signatures on the complaint and Information. We stated that even assuming this claim was not procedurally barred, we would decline to consider arguments not first raised in the circuit court.

Roughly seven years later, Bell filed his fourth pro se WIS. STAT. § 974.06 postconviction motion, which is the subject of the present appeal. Bell claimed the assistant district attorney who signed the criminal complaint committed a fraud on the court because his signature appeared above a signature block that contained the district attorney's name and state bar number. Bell asserted that the alleged error required vacation of the judgment of conviction. Bell also appeared to argue that his postconviction counsel was ineffective for not raising this

issue through a claim of ineffective assistance of his trial counsel. The circuit court denied the motion without a hearing on the grounds that it was procedurally barred. Bell now appeals.

Any claims that Bell could have raised on direct appeal or in his previous three WIS. STAT. § 974.06 postconviction motions are barred from being raised in this subsequent § 974.06 motion absent a showing of a "sufficient reason" why the claims were not brought previously. *See* ***State v. Lo***, 2003 WI 107, ¶44, 264 Wis. 2d 1, 665 N.W.2d 756. To obtain an evidentiary hearing on his claim, Bell was also required to do more than simply allege that his postconviction counsel was ineffective for failing to challenge an aspect of trial counsel's performance. In particular, Bell was required to assert why it was deficient performance for postconviction counsel not to raise the issue regarding the signature on the complaint. *See* ***State v. Balliette***, 2011 WI 79, ¶65, 336 Wis. 2d 358, 805 N.W.2d 334. This meant Bell was required to demonstrate that his current claim is clearly stronger than the claim that his attorney actually litigated. *See* ***State v. Romero-Georgana***, 2014 WI 83, ¶4, 360 Wis. 2d 522, 849 N.W.2d 668.

Bell shows neither a sufficient reason for not bringing his current claim on direct appeal or in his earlier motions, nor does he show that his current claim is clearly stronger than those previously raised in his prior motions and appeal. Bell argues that he did not uncover the alleged fraud in the criminal complaint until November 2010, when he received a copy of the signed complaint in response to his last postconviction motion.[2] However, this alleged evidence was not new. As the circuit court correctly noted, the signed criminal complaint has been in

[2] Bell also claims on appeal that he did not discover that the signed complaint was "defective" until 2013, but that is not what he indicated in his motion. Indeed, earlier in his principal brief to this court, Bell submitted that he had no opportunity to supplement his last postconviction motion with his current claim because on November 19, 2010, he received a signed criminal complaint with the circuit court's order denying his last motion.

existence since it was filed in 2003 and was thus discoverable by Bell prior to his direct appeal, and certainly prior to his first pro se WIS. STAT. § 974.06 motion. In fact, Bell acknowledged that he had access to an unsigned criminal complaint and Information "in September 2003 and March 2004, respectively." Therefore, Bell could have—and should have—investigated sooner than 2010 whether the criminal complaint on file was signed and by whom. While this does not by itself contradict his argument that he did not actually know of this claim, it critically undercuts Bell's contention that "ignorance of the facts" may show a sufficient reason for overcoming the procedural bar. *See* ***State v. Allen***, 2010 WI 89, ¶91, 328 Wis. 2d 1, 786 N.W.2d 124.

Bell also contends that "fraud on the court" provides an exception to the procedural bar, but he cites no precedent establishing that proposition, and we will not further address the issue other than to note that the criminal complaint was not forged. Bell concedes the assistant district attorney "signed the complaint with his own handwritten signature." There is no evidence the district attorney did not authorize her assistant district attorney to sign the complaint over her signature block. Perhaps more importantly, there is also no evidence of any intent to defraud. The circuit court properly barred Bell's relief without an evidentiary hearing.

Bell also argues we should exercise our discretionary reversal power under WIS. STAT. § 752.35, contending "the issue of [the assistant district attorney] forging his name on the complaint on file has not been tried in any court." Bell neither argues that the jury was unable to hear testimony on an important issue in the case, nor does he claim that the jury considered improperly admitted evidence. *See* ***State v. Hicks***, 202 Wis. 2d 150, 160, 549 N.W.2d 435 (1996). Quite simply, the real controversy was fully tried, and justice was not miscarried. Bell merely advances a misplaced technical argument concerning the criminal complaint that has

nothing to do with the integrity of the jury's conviction or his criminal proceeding more generally.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals