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DISTRICT I

December 22, 2020

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

2019AP1713

State of Wisconsin v. Willie C. Simpson (L.C. # 1999CF4849)

Before Brash, P.J., Donald and White, 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).

Willie C. Simpson, *pro se*, appeals from an order of the circuit court that denied his motion for postconviction relief. 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 (2017-18).¹ Therefore, the order is summarily affirmed.

In May 2000, Simpson was convicted following a court trial on two counts of first-degree sexual assault of a child. He was given consecutive twenty-five-year sentences. Since then, Simpson has advanced multiple unsuccessful challenges to his convictions, including a direct appeal, three WIS. STAT. § 974.06 motions, and a “motion to void and commute sentence.”

Underlying the current appeal is Simpson’s fourth WIS. STAT. § 974.06 motion.² Simpson alleged that the trial court lacked subject matter jurisdiction to convict him because the State failed to file an authenticated copy of the criminal complaint bearing a file stamp from the circuit court clerk. The circuit court denied the motion as procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994).³ Simpson appeals.

After the time for direct appeal or postconviction remedy has expired, a prisoner in custody under sentence of a court, claiming the right to be released upon the ground that the court was without jurisdiction to impose such sentence, may move the court which imposed the sentence to vacate, set aside, or correct the sentence. *See* WIS. STAT. § 974.06(1). However, “any claim that could have been raised on direct appeal or in a previous ... [§ 974.06] postconviction motion is barred from being raised in a subsequent § 974.06 postconviction

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

² While this court is not bound by labels, we observe that Simpson specifically captioned his handwritten document as a “motion for post-conviction relief pursuant to 974.06.”

³ The court trial was conducted by the Honorable John J. DiMotto, who will be referred to as the trial court. The latest postconviction motion was denied by the Honorable Joseph R. Wall, who will be referred to as the circuit court.

motion, absent a sufficient reason.” *State v. Lo*, 2003 WI 107, ¶2, 264 Wis. 2d 1, 665 N.W.2d 756 (footnote omitted); *see also* § 974.06(4) and *Escalona*, 185 Wis. 2d at 184-85. Whether Simpson’s motion was procedurally barred is a question of law we review *de novo*. *See State v. Tillman*, 2005 WI App 71, ¶14, 281 Wis. 2d 157, 696 N.W.2d 574.

Simpson does not dispute the *Escalona* procedural bar as a general principle; he simply asserts it does not apply here because he believes his judgment of conviction is void for lack of subject matter jurisdiction, and void judgments can be challenged at any time. *See Neylan v. Vorwald*, 124 Wis. 2d 85, 97, 368 N.W.2d 648 (1985). But Simpson’s mere assertion that his judgment is void does not make it so, and, upon review, we discern no jurisdictional infirmities.

Simpson contends that the trial court in his case lacked subject matter jurisdiction because the State failed to file an authenticated criminal complaint, which Simpson believes is required by WIS. STAT. § 801.09(4)⁴ and WIS. STAT. § 967.05(1)(a). However, Simpson is mistaken about the applicability of § 801.09. WISCONSIN STAT. chs. 801 to 847 “govern procedure and practice in circuit courts of this state in all civil actions[,]” while chs. 967-979 “govern all criminal proceedings[.]” *See* WIS. STAT. §§ 801.01(2), 967.01. Thus, a civil action “is commenced as to any defendant when a summons and a complaint naming the person as defendant are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant” within ninety days, *see* WIS. STAT. § 801.02(1), but a criminal prosecution “may be commenced by the filing of a complaint,” *see* § 967.05(1)(a).

⁴ “There may be as many authenticated copies of the summons and the complaint issued ... as are needed for the purpose of effecting service on the defendant. Authentication shall be accomplished by the clerk’s placing a filing stamp indicating the case number on each copy of the summons and the complaint.” WIS. STAT. § 801.09(4).

Moreover, compliance failures related to pleading, filing, and service requirements in ch. 801 deprive a trial court of personal, not subject matter, jurisdiction. *See American Fam. Mut. Ins. Co. v. Royal Ins. Co.*, 167 Wis. 2d 524, 533-35, 481 N.W.2d 629 (1992).

A trial court's criminal subject matter jurisdiction "attaches when the complaint is filed." *See State v. Aniton*, 183 Wis. 2d 125, 129, 515 N.W.2d 302 (Ct. App. 1994). "The [trial] court lacks criminal subject-matter jurisdiction only where the complaint does not charge an offense known to law." *Id.* A party challenging the court's subject matter jurisdiction has the burden to prove its nonexistence. *See State ex rel. R.G. v. W.M.B.*, 159 Wis. 2d 662, 668, 465 N.W.2d 221 (Ct. App. 1990).

Simpson does not assert that the criminal complaint failed to charge an offense known to law. Rather, Simpson believes the complaint of record was unauthenticated and fraudulent because the copy he received from the clerk of the circuit court when he requested a certified copy is only two pages long, while the record index for the record on appeal indicates that the complaint is three pages long. Simpson thus contends that the State must have forged the complaint in the record sometime after he received his copy from the clerk.

This page-length discrepancy, however, is simply a consequence of the transition from physical to digital files. In its original physical paper form, the complaint consisted of two sheets of paper; the text of the complaint was printed on the front of each sheet, and the clerk of the circuit court file-stamped the complaint on the back side of the second sheet. With a paper record, the parties and the court could easily view both sides of each sheets of paper. As part of a court-wide transition to electronic record-keeping, though, paper record documents are being scanned to create electronic versions, and a scan only captures one side of a document at a time.

Thus, to accurately represent the complaint in digital form, the clerk needed to scan three pages—the front of sheet one and both sides of sheet two—to electronically capture all of the information displayed in the physical document. That is, digital page three is simply the back side of the second sheet of paper and is the location where the circuit court clerk placed the file stamp.

We do not know why the clerk of the circuit court did not provide a hard copy of the third page to Simpson, but we note that the clerk's file stamp is partially visible on page two. The file stamp indicates that the complaint was filed at 3:30 p.m. on September 23, 1999. In the lower right quadrant of page two, the “3:3” from the time portion of the stamp can be seen, upside down and reversed, the ink having seeped through the original paper from the back to the front.

Accordingly, the trial court acquired subject matter jurisdiction over the case against Simpson upon the filing of the complaint on September 23, 1999. Simpson has not shown the resulting judgment to be void; thus, his current postconviction motion is subject to the restrictions of WIS. STAT. § 974.06(4) and *Escalona*. To the extent that Simpson may also be arguing that the trial court lacked personal jurisdiction, “a criminal defendant forfeits his objection to personal jurisdiction by failing to object before sentencing and conviction.... [T]he law forecloses a remedy for a criminal defendant who forfeits an objection based upon a lack of personal jurisdiction[.]” *Skindzelewski v. Smith*, 2020 WI 57, ¶20, 392 Wis. 2d 117, 944 N.W.2d 575. Thus, any claim that the trial court lacked personal jurisdiction is also subject to the *Escalona* procedural bar.

Additionally, Simpson has offered no reason, much less sufficient reason, for his failure to raise his current complaints in a prior motion. Thus, the circuit court did not err when it denied Simpson's latest WIS. STAT. § 974.06 motion as procedurally barred.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. *See* 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