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DISTRICT I

March 16, 2021

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

2019AP2422

State of Wisconsin v. Maurice M. Mathis (L.C. # 1995CF955387)

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

Maurice M. Mathis, *pro se*, appeals an order denying his postconviction motion for relief.

Upon our review of the briefs and record, we conclude at conference that this matter is

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

In 1996, a jury found Mathis guilty of first-degree intentional homicide, while using a dangerous weapon, as a party to the crime. The trial court imposed a mandatory life sentence and set August 3, 2038, as his parole eligibility date. Following his conviction, Mathis's appointed postconviction counsel moved this court to withdraw as counsel. The motion was based on correspondence from Mathis to postconviction counsel, in which Mathis told counsel that she was "fired," that it was the "last time telling counsel" that she was fired, and that he wanted her to "honor that." (Some underlining omitted.) We granted postconviction counsel's motion to withdraw.

Mathis, *pro se*, then filed a postconviction motion, seeking resentencing to modify his parole eligibility date. The trial court denied the motion; Mathis appealed, and this court affirmed.

Over twenty years later, Mathis, *pro se*, filed the postconviction motion underlying this appeal. Mathis argued that his conviction resulted from: the "introduction of evidence obtained pursuant to an unlawful arrest"; the "introduction into evidence of a statement obtained in the absence of counsel at a time when representation is constitutionally required"; a violation of his right against self-incrimination; the State's "unconstitutional suppression" of evidence; the State's use of perjured testimony during trial; "impermissible suggestiveness"; and ineffective assistance of counsel. (One set of quotation marks omitted.) Mathis stated that he did not raise

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

these issues in his previous postconviction motion because his postconviction counsel informed him that his claims were meritless and because he lacked the mental capacity to assist in his defense. As support for his assertion that he lacked the mental capacity to assist his postconviction counsel, Mathis attached a letter dated March 10, 1996, from one of the doctors who evaluated Mathis prior to his trial. The letter stated that “it seems reasonable to think that with such an attitude [Mathis] may not be able to communicate rationally with his [trial] attorney and aid ... in the preparation of whatever defense is there for him.”

The circuit court² denied the motion without a hearing, finding that the motion was procedurally barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The circuit court also noted that Mathis’s ineffective assistance of counsel claims lacked merit because Mathis dismissed his own counsel during the course of his direct appeal. This appeal follows.

On appeal, Mathis contends that the circuit court erred in dismissing his postconviction motion. The crux of Mathis’s argument is that his numerous postconviction claims should not be procedurally barred or “waived” because he was not competent to either discharge his postconviction counsel or represent himself in his direct appeal. He also contends that the circuit court mischaracterized his motion as his second postconviction motion and that multiple evidentiary errors were made by the State and trial court.

² We refer to the court that presided over Mathis’s trial and his first postconviction motion as the trial court. We refer to the court that denied the motion underlying this appeal as the circuit court.

Absent a sufficient reason, a defendant is procedurally barred from raising claims in a WIS. STAT. § 974.06 postconviction motion that could have been raised in a prior postconviction motion or appeal. *See* § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d 168 at 181-82, 184-86. Whether a sufficient reason is stated is a question of law subject to *de novo* review. *State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

To entitle the defendant to a hearing, a postconviction motion “must include facts that ‘allow the reviewing court to meaningfully assess [the defendant’s] claim.’” *State v. Allen*, 2004 WI 106, ¶21, 274 Wis. 2d 568, 682 N.W.2d 433 (alteration in original; citation omitted). This means the motion must “allege the five ‘w’s’ and one ‘h’; that is, who, what, where, when, why, and how,” and it must do so “within the four corners of the document itself[.]” *Id.*, ¶23. Conclusory statements that do not contain these key facts are insufficient to entitle the defendant to a hearing. *Id.*, ¶24. If any of these elements are missing, the circuit court has the discretion to deny the motion without a hearing. *Id.*, ¶12.

We determine the sufficiency of the defendant’s reason for circumventing the *Escalona-Naranjo* procedural bar by examining the four corners of the postconviction motion. *See Allen*, 274 Wis. 2d 568, ¶27. Based on the contents of Mathis’s postconviction motion, we conclude that the motion is procedurally barred by *Escalona-Naranjo* because it fails to allege a sufficient reason for not raising the issues in the prior motion. The motion underlying this appeal asserted that, based on the opinion of “mental health experts,” Mathis lacked the competency to discharge his appointed postconviction counsel and to proceed with his direct appeal *pro se*. It also asserted that the circuit court mistakenly labeled his WIS. STAT. § 974.06 motion as his second motion for postconviction relief. When Mathis filed his first *pro se* postconviction motion challenging his parole eligibility date, he had dismissed counsel for what he deemed to be

counsel's refusal to raise the issues Mathis raised in his recent § 974.06 motion. In other words, Mathis was aware of the issues now before us but did not previously raise them. He now claims lack of competency as the reason for dismissing counsel and failing to previously raise these issues. However, Mathis's postconviction motion provides no factual support for his assertion. His motion attached an inconclusive letter from a psychiatrist which, when read in its entirety, stated that the doctor could not conduct a complete examination and that Mathis required additional observation. The letter does not satisfy the five "w's" and one "h" regarding Mathis's competency claim. Thus, we conclude that Mathis failed to raise a sufficient reason for not bringing his current claims in a previous postconviction motion or on direct appeal. Accordingly, we agree with the circuit court that Mathis's claims are procedurally barred by *Escalona-Naranjo*.

Accordingly, we affirm the order denying Mathis's motion for postconviction relief.

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