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DISTRICT I

September 8, 2021

To:

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Circuit Court Judge
Electronic Notice

Donald V. Latorraca
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John Barrett
Clerk of Circuit Court
Milwaukee County
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Elijah Swantee Brooks 204821
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John D. Flynn
Electronic Notice

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

2019AP1825

State of Wisconsin v. Elijah Swantee Brooks
(L.C. # 1993CF932183)

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

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).

Elijah Swantee Brooks, *pro se*, appeals an order of the circuit court denying his motion requesting that the circuit court enter a judgment of conviction with 123 days of sentencing credit. He also appeals from the circuit court order denying his motion for reconsideration. Upon review, we affirm.

In 1993, a jury found Brooks guilty of second-degree sexual assault of a child. The circuit court sentenced Brooks to a thirty-month term of imprisonment and determined that he was due "0 days sentence credit." After sentencing, Brooks, his counsel, and the prosecutor

requested that the circuit court grant Brooks 123 days of sentence credit. On January 3, 1994, the circuit court ordered Brooks to receive 123 days of sentence credit. The clerk entered the order on January 10, 1994.

Between 1994 and 2009, Brooks filed a series of motions and appeals, including a May 2009 notice of appeal stemming from a circuit court order denying his motion to reconsider its denial of his motion to vacate his conviction. Brooks moved to voluntarily dismiss his appeal and this court granted the motion. Shortly thereafter, however, Brooks filed a new notice of appeal asking this court to reinstate his dismissed appeal. This court denied his motion to reinstate his appellate rights based on its determinations that Brooks had previously voluntarily dismissed his appeal, that the matter had been previously remitted to the circuit court, and that this court no longer had jurisdiction. Brooks then moved the circuit court to reinstate his appeal. The circuit court denied the motion on the ground that it lacked the authority to reinstate Brooks's appeal, prompting Brooks to again ask this court to "exercise [its] original jurisdiction" and reinstate his appellate rights. This court denied the motion on the ground that we lost jurisdiction when remittitur occurred.

Approximately ten years later, Brooks filed the motion underlying this appeal. In August 2009, Brooks moved the circuit court to enter a judgment of conviction for the purpose of filing a new appeal. Brooks appeared to argue that the circuit court failed to include its sentence credit determination on the judgment of conviction when it sentenced him. He argued that the clerk's note attached to the judgment of conviction reflecting the circuit court's order granting Brooks 123 days of sentence credit was invalid because it was signed by the clerk, not the judge. Therefore, Brooks argued, no judgment of conviction had been validly entered and no

appeal could be taken. Brooks also alleged ineffective assistance of counsel and multiple due process violations.

The circuit court dismissed the motion, stating that it lacked the jurisdiction to consider any of Brooks's claims. First, the circuit court noted that Brooks's judgment of conviction was entered on October 15, 1993; thus, Brooks's appeal rights pursuant to WIS. STAT. RULE 809.30 (2019-20)¹ had expired. Second, the circuit court determined it had no jurisdiction to proceed under WIS. STAT. § 974.06 because Brooks was no longer in custody. Lastly, the circuit court determined that any issues pertaining to Brooks's sentencing credit were moot because "the sentence of this case has no bearing on the sentence computation for the sentence [Brooks] is currently serving." Brooks moved for consideration. The circuit court denied the motion. This appeal follows.

On appeal, Brooks maintains that the original judgment of conviction was invalid and seemingly argues that multiple due process violations stemmed from his sentencing hearing. Brooks seeks to compel the circuit court to enter a "valid" judgment of conviction, reflecting 123 days of sentencing credit, from which he can appeal. We reject Brooks's request.

First, the original judgment of conviction in this matter is valid. The circuit court entered "0 days sentence credit" on the judgment of conviction when it sentenced Brooks based on the information available at the time of Brooks's sentencing hearing. At that time, trial counsel could not provide credit information due to uncertainty about the time Brooks served after the revocation of his probation in another case. However, the circuit court acknowledged that

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

Brooks was entitled to “a significant number of days credit,” and gave trial counsel time to compute the exact amount. Brooks, his trial counsel, and the prosecutor subsequently agreed that the circuit court should grant Brooks 123 days of sentence credit. The circuit court ordered Brooks to receive credit for 123 days. *See* WIS. STAT. § 973.155(5) (1993-94). Through an attachment to the judgment of conviction, a clerk noted the circuit court’s sentence credit order and signed it. *See* WIS. STAT. § 972.13(4) (“Judgments shall be in writing and signed by the judge or clerk.”). Accordingly, the circuit court did enter a judgment of conviction reflecting a sentence credit of 123 days, which was appropriately signed by the clerk.² Thus, the 1993 judgment of conviction was a valid order.

Consequently, in order to seek relief, Brooks was required to comply with WIS. STAT. RULE 809.30 and WIS. STAT. § 974.02, which are the primary mechanisms available to a person pursuing a direct challenge to a judgment of conviction. *See State v. Henley*, 2010 WI 97, ¶¶45-49, 328 Wis. 2d 544, 787 N.W.2d 350. Brooks filed the motion underlying this appeal in 2019—well past the time limits prescribed by the statutes. The circuit court correctly determined that Brooks’s rights under RULE 809.30 and § 974.02 have expired.

“After the time for appeal or postconviction remedy provided in WIS. STAT. § 974.02 has expired, a prisoner in custody under sentence of a court may bring a motion to vacate, set aside, or correct a sentence, utilizing the procedure set out in WIS. STAT. § 974.06.” *State v. Balliette*, 2011 WI 79, ¶34, 336 Wis. 2d 358, 805 N.W.2d 334. A circuit court lacks subject matter jurisdiction to hear a motion under § 974.06 if the defendant is no longer in custody in

² The clerk’s signature did not reflect an independent modification of Brooks’s sentence; rather, the clerk signed the judgment of conviction as modified by the circuit court.

connection with the conviction challenged in the motion. *Jessen v. State*, 95 Wis. 2d 207, 211, 290 N.W.2d 685 (1980). Brooks completed the thirty-month sentence imposed in this case and therefore was not in custody in connection with the conviction underlying this appeal. Accordingly, the circuit court properly concluded that it was without jurisdiction to decide Brooks's motion pursuant to § 974.06.

To the extent Brooks raised arguments not addressed in this decision, we conclude that our resolution of the issues discussed are dispositive of Brooks's appeal. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (“[C]ases should be decided on the narrowest possible ground.”).

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the orders are 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