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DISTRICT III

September 21, 2021

To:

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Circuit Court Judge
Electronic Notice

Peter Anderson
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John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
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John W. Kellis
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1783-CR	State of Wisconsin v. Patrick Joseph Powers
2020AP1784-CR	(L. C. Nos. 2017CF1293, 2019CF53, 2019CF54)
2020AP1785-CR	

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

Patrick Powers appeals from felony and misdemeanor judgments of conviction in three cases that were at times handled jointly in the circuit court. In each of the appeals, Powers raises claims of ineffective assistance of counsel and alleges that he was denied his right to a speedy trial. Powers also appeals from an order denying his postconviction challenges to the criminal complaint and his bindover in one of the cases. Based upon our review of the briefs and records,

we conclude at conference that these appeals are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

First, we note that none of Powers' ineffective assistance claims have been preserved for appellate review because he did not raise them in the circuit court. It is a defendant's responsibility to obtain counsel's presence at the hearing at which counsel's conduct is challenged; without testimony from Powers' trial counsel, this court is unable to evaluate whether counsel performed deficiently. *See State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). We further observe that Powers has failed to address either the deficient performance or prejudice elements of an ineffective assistance claim in any of his appellate briefs. We conclude that Powers has both forfeited and failed to develop all of his ineffective assistance claims, and we will not address them further. *See Schonscheck v. Paccar, Inc.*, 2003 WI App 79, ¶¶10-11, 261 Wis. 2d 769, 661 N.W.2d 476.

Second, Powers has failed to develop any coherent speedy trial arguments that are supported by relevant legal authority and linked to citations in the record, as required by the rules of appellate procedure. *See* WIS. STAT. RULE 809.19(1)(d) and (e). Moreover, the record does not demonstrate a basis for Powers' speedy trial claims. Powers has no statutory speedy trial violation claim in Brown County case No. 2019CF53 because his trial was held within ninety days of his arraignment, when his effective speedy trial demand was made. *See* WIS. STAT. § 971.10(2)(a). Powers would have no additional remedy for any statutory speedy trial violation in Brown County case Nos. 2017CF1293 or 2019CF54 because he was released on signature

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

bond in those cases in response to his claims of a speedy trial violation. *See* § 971.10(4) (the exclusive remedy for noncompliance with the statutory speedy trial requirement is discharge from custody pending trial). Powers also has not established a constitutional violation of his speedy trial rights in any of the three cases because he has not addressed his own role in setting back the trial dates, nor has he identified any prejudice he suffered from the delays. *See State v. Borhegyi*, 222 Wis. 2d 506, 509, 588 N.W.2d 89 (Ct. App. 1998) (discussing four-part balancing test to determine whether a person’s constitutional right to a speedy trial was violated, including the reason for the delay and whether the delay resulted in prejudice).

Third, Powers asserts that prosecutors violated WIS. STAT. §§ 968.01 and 968.02 and the constitutional doctrine of separation of powers by signing the complaint in Brown County case No. 2017CF54 without involving law enforcement. We conclude that Powers also forfeited this issue by failing to raise it before trial. *See* WIS. STAT. § 971.31(2).

Finally, Powers challenges the sufficiency of the evidence to support his bindover in Brown County case No. 2017CF54. It is well settled, however, that a fair trial, which occurred here, cures any error at the preliminary hearing. *See State v. Webb*, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991).

Upon the foregoing,

IT IS ORDERED that the judgments are summarily affirmed. 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