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DISTRICT II

December 8, 2021

To:

Hon. Mary Kay Wagner
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County
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Jubilee S. Braithwaite, #497917
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2020AP1220	State of Wisconsin v. Jubilee S. Braithwaite (L.C. #2016CF984)
2020AP1221	State of Wisconsin v. Jubilee S. Braithwaite (L.C. #2016CF1090)

Before Gundrum, P.J., Neubauer and Reilly, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes sspecified in WIS. STAT. RULE 809.23(3).

Jubilee S. Braithwaite appeals pro se from circuit court orders denying his petition seeking relief under WIS. STAT. § 974.06 (2019-20)[1] without a hearing and denying reconsideration. 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. We affirm.

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

In 2017, Braithwaite pled guilty to six offenses, including drug offenses, felony bail jumping, and robbery of a financial institution (threat of use of a dangerous weapon). Other counts were dismissed and read in at sentencing. The circuit court sentenced Braithwaite to three consecutive thirteen-year terms for the financial institution robbery and a consecutive three-year term of probation for the other offenses (along with time served). In his appeal of the robbery conviction, Braithwaite challenged his sentence as unduly harsh. We affirmed the conviction. ***State v. Braithwaite***, No. 2018AP1141-CR, unpublished op. and order (WI App Mar. 6, 2019) (Kenosha County Circuit Court Case No. 2016CF1090).[2] In May 2020, Braithwaite filed in both criminal cases a document captioned as a petition for a writ of habeas corpus and citing WIS. STAT. § 974.06. The circuit court denied the petition. Braithwaite appeals.

As a threshold matter, we observe that the circuit court misunderstood the nature of Braithwaite's petition seeking WIS. STAT. § 974.06 relief. The court deemed the petition "an appeal of the decision of the appeals court" and denied it for that reason. Braithwaite's petition was properly filed in the circuit court and sought relief pursuant to § 974.06. Even though the circuit court misunderstood the petition, we nevertheless affirm the order denying the petition. *See* ***Milton v. Washburn County***, 2011 WI App 48, ¶8 n.5, 332 Wis. 2d 319, 797 N.W.2d 924 ("[I]f a circuit court reaches the right result for the wrong reason, we will nevertheless affirm.").

[2] Braithwaite did not appeal his conviction in ***State v. Braithwaite***, Kenosha County Circuit Court Case No. 2016CF984.

A circuit court has discretion[3] to deny a request for relief under WIS. STAT. § 974.06 without an evidentiary hearing if the pleadings do not allege "sufficient facts that, if true, show that the defendant is entitled to relief," "or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief." ***State v. Balliette***, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334 (citation omitted).

We have reviewed the petition Braithwaite filed in the circuit court. To the extent Braithwaite's appellate briefs seek to supplement the claims he made in the circuit court, we do not consider the supplementation. Our review is confined to the petition filed in the circuit court. To the extent we do not address any claim raised in the petition and the appellate briefs, such claims are deemed rejected because they lack merit and did not warrant an evidentiary hearing or discussion by this court.[4]

In his circuit court petition, Braithwaite argued that his trial counsel was ineffective at the plea and sentencing hearings because counsel did not object to the State's breach of the plea agreement. Braithwaite alleged that as part of the plea agreement, the State agreed to recommend the following: cap the sentence at eight years' initial confinement, all sentences should be concurrent, and probation should be left to the court's discretion. The State did not make this recommendation at sentencing.

[3] "[R]egardless of the extent of the trial court's reasoning, we will uphold a discretionary decision if there are facts in the record which would support the trial court's decision had it fully exercised its discretion." ***State v. Payano***, 2009 WI 86, ¶41, 320 Wis. 2d 348, 768 N.W.2d 832 (citation omitted).

[4] While we have considered all of the arguments in the briefs, we only discuss those arguments that are necessary to our decision. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (we are not bound to the manner in which the parties have structured or framed the issues). Arguments not mentioned are deemed rejected. ***Id.***

Attached to the plea questionnaire Braithwaite and his counsel signed and filed in circuit court case no. 2016CF984 was an Acknowledgment of Plea Offer/Agreement with the following box checked: "All parties will be free to make appropriate sentence recommendations ("free hand")." Braithwaite, his counsel and the prosecutor signed the Acknowledgment. The signed plea questionnaire filed in circuit court case no. 2016CF1090 states "free to argue."[5] At the plea hearing, the court did not inquire whether the parties had agreed on sentencing recommendations.

Braithwaite does not cite to that portion of the record showing that the State agreed to recommend a particular sentence.[6] This issue lacks merit and did not warrant an evidentiary hearing. The circuit court's denial of the petition, including ineffective assistance of trial and postconviction counsel claims premised on the alleged breach, was the right result.[7]

Braithwaite's petition also alleged that the plea colloquy was defective because the circuit court did not make clear to him the elements of the robbery offense, did not warn him that it was not bound by any sentence recommendation and could impose the maximum sentence, and did not fully advise him about the effect of dismissed and read-in offenses. These claims are all conclusory and inadequately pled. A challenge to a plea must (1) make a prima facie showing

[5] Both circuit court cases were handled at the same plea hearing.

[6] We will not sift the record for facts that might support Braithwaite's contention about an alleged feature of the plea agreement. *See* ***Keplin v. Hardware Mut. Cas. Co.***, 24 Wis. 2d 319, 324, 129 N.W.2d 321 (1964). "An appellate court is improperly burdened where briefs fail to properly and accurately cite to the record." ***Hedrich v. Board of Regents***, 2001 WI App 228, ¶1 n.2, 248 Wis. 2d 204, 635 N.W.2d 650.

[7] Counsel does not render ineffective assistance by failing to raise a meritless issue or make a meritless objection. *See* ***State v. Cameron***, 2016 WI App 54, ¶27, 370 Wis. 2d 661, 885 N.W.2d 611.

that the plea colloquy was defective because the circuit court failed to fulfill its duties during the plea colloquy and (2) "allege that the defendant did not, in fact, know or understand the information that should have been provided during the plea colloquy." ***State v. Taylor***, 2013 WI 34, ¶32, 347 Wis. 2d 30, 829 N.W.2d 482. Braithwaite's petition does not satisfy ***Taylor***.[8] The circuit court's rejection of the challenges to the plea was the right result.

Braithwaite alleged that his counsel (1) threatened him that if he did not cooperate with the court, counsel would withdraw and (2) guaranteed that all sentencing concessions would be fulfilled at sentencing. The record does not show a "sentencing concession" by the State. These allegations are conclusory, not supported in the record, and did not warrant an evidentiary hearing.

Braithwaite argues on appeal that the victim impact testimony at his sentencing violated the rules of evidence.[9] The rules of evidence, including those that govern hearsay, do not apply

[8] During the plea colloquy, Braithwaite manifested his understanding of the effect of the dismissed and read-in offenses as far as relevant to his cases. In the absence of a sentencing recommendation in the plea agreement, the circuit court's failure to insure that Braithwaite understood that the court was not bound by the terms of the plea agreement, including a sentencing recommendation, provides no basis for relief. *See* ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14.

Braithwaite equates the circuit court's requirement that he state his guilty plea on the record to being "ordered" by the circuit court to plead guilty. This issue lacks merit.

Braithwaite also argues on appeal that he should not have pled guilty to two counts of bail jumping in circuit court case no. 2016CF984 because they were supposed to be dismissed and read in. The plea questionnaire he signed and filed in circuit court case no. 2016CF984 does not support this claim. The bail jumping offenses appear on the questionnaire as counts to which Braithwaite agreed to enter a guilty plea.

[9] Braithwaite's circuit court petition does not appear to have raised this claim. Rather, in his petition, Braithwaite complained that the victim impact testimony undermined the State's sentencing recommendation. As we have held, the State did not agree to recommend a particular sentence. This issue lacks merit.

at sentencing. WIS. STAT. § 911.01(4)(c); ***State v. Arredondo***, 2004 WI App 7, ¶53, 269 Wis. 2d 369, 674 N.W.2d 647 (explaining that sentencing courts are "unconstrained by the rules of evidence that govern the guilt-phase of a criminal proceeding"). This issue lacks merit and did not warrant an evidentiary hearing.

Braithwaite makes no appellate arguments challenging the circuit court's order denying reconsideration. We do not address the motion for reconsideration.

Even though the circuit court relied on erroneous grounds for denying the petition, we nevertheless affirm the order denying the petition without an evidentiary hearing. *See* ***Milton***, 332 Wis. 2d 319, ¶8 n.5. ("[I]f a circuit court reaches the right result for the wrong reason, we will nevertheless affirm."). Denying the petition was not a misuse of discretion. *See* ***Balliette***, 336 Wis. 2d 358, ¶18.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are 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