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DISTRICT IV

April 7, 2022

To:

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

2021AP66	State of Wisconsin v. Peter J. Cloonan (L.C. # 2014CF305)
2021AP67	State of Wisconsin v. Peter J. Cloonan (L.C. # 2014CF1785)

Before Blanchard, P.J., Fitzpatrick, and Graham, 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).

Peter Cloonan appeals an order denying his postconviction motion filed under WIS. STAT. § 974.06 (2019-20).¹ Based upon our review of the briefs and record, we conclude at conference that these cases are 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 2014, Cloonan pled guilty to and was convicted of four misdemeanor counts: theft by false representation, resisting or obstructing an officer, and two counts of disorderly conduct. In addition, Cloonan pled guilty to one felony count of uttering a forgery, but was not convicted on that count because the circuit court agreed to withhold adjudication.

In 2015, the circuit court amended one of the judgments to impose twenty days of jail time as a condition of probation. However, Cloonan did not report to jail or appear at a later probation review hearing.

In 2020, Cloonan filed a postconviction motion seeking to withdraw his pleas on the ground that his counsel at the time of entering the pleas had a conflict of interest and, as a result, Cloonan was denied effective assistance of counsel. At a hearing on the motion, the circuit court confirmed that arrest warrants for Cloonan were still outstanding. The court adjourned the hearing in part for Cloonan to turn himself in. He did not do that. Eventually another hearing was held, and Cloonan had still not turned himself in by that time.

In a written order, the circuit court denied the postconviction motion for two reasons. First, it concluded that Cloonan had forfeited his right to postconviction relief by remaining in absconder status. Second, the court rejected his claim of ineffective assistance of counsel on the merits.

On appeal, Cloonan's opening brief addresses only the merits of his ineffective assistance of counsel claim and does not address the denial of his motion based on his absconder status. By failing to address one of the grounds for the circuit court's decision, Cloonan failed to show a basis to reverse that decision. Even if we were to agree with his argument on the merits of his ineffective assistance of counsel claim—an issue we do not consider or decide here—the denial

order would continue to stand based on his absconder status. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (it is a tacit concession when appellant ignores a ground on which the trial court ruled and raises issues on appeal that do not undertake to refute the circuit court's ruling). Accordingly, we affirm, first, because Cloonan conceded this point by not raising it in his opening brief.

Beyond that, Cloonan finally addresses this basis for the denial of his motion in his reply brief. Normally we do not consider arguments made for the first time in a reply brief but, even if we do so here, Cloonan does not prevail.

Cloonan does not dispute the existence of what the State refers to as the fugitive dismissal rule. Instead, he argues that a sanction on that basis is permitted only when a defendant's fugitive status disrupts or presents an obstacle to the judicial process. He argues that in this case his fugitive status had no effect on the postconviction process because he was able to, and did, appear in circuit court for the postconviction hearings by video conferencing.

This argument fails because it does not acknowledge that Cloonan's failure to report to jail as a condition of probation, and his ongoing absconsion from probation, were obstacles to the judicial process by entirely thwarting enforcement of the circuit court's judgment of conviction. Cloonan points to nothing in case law that suggests it was an erroneous exercise of discretion for the circuit court to impose that sanction on these facts.

IT IS ORDERED that the order appealed from is summarily affirmed under 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