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DISTRICT IV

May 5, 2022

To:

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

2020AP464

State of Wisconsin v. Raymond C. Williams (L.C. # 2009CF915)

Before Blanchard, P.J., Kloppenburg, 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).

Raymond Williams, pro se, appeals an order denying his WIS. STAT. § 974.06 (2019-20)¹ postconviction motion without an evidentiary hearing. 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. For the reasons that follow, we affirm.

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

Following a jury trial, Williams was convicted of hiding a corpse and kidnapping. In his direct appeal, Williams, by counsel, argued that insufficient evidence supported Williams' conviction for hiding a corpse. We agreed with Williams and reversed as to that count. *State v. Williams*, No. 2011AP1745-CR, unpublished slip op. and order (WI App Aug. 29, 2012).

After his state and federal petitions for habeas corpus relief failed,² Williams filed his first WIS. STAT. § 974.06 postconviction motion in February 2015. The motion asserted that Williams' trial counsel provided ineffective assistance, and that his postconviction counsel was ineffective for not raising these claims as part of Williams' direct appeal. The circuit court denied the motion and we affirmed. *State v. Williams*, No. 2015AP745, unpublished slip op. and order (WI App Feb. 16, 2016).

On November 18, 2019, Williams filed the WIS. STAT. § 974.06 postconviction motion underlying this appeal. Among other claims, he asserted that his trial counsel provided ineffective assistance by conceding Williams' guilt of hiding a corpse during closing argument, in violation of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018) (unconstitutional to allow defense attorney to concede the defendant's guilt to the jury over the defendant's objection). The circuit court denied the motion without an evidentiary hearing on grounds that Williams' postconviction motion contained conclusory allegations and failed to raise any meritorious issues. Williams appeals.

² In state court, Williams filed a habeas corpus petition under *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992), alleging the ineffective assistance of appellate counsel. In it, he alleged that his appellate counsel was ineffective for failing to challenge the kidnapping count. We denied the petition, concluding that none of the materials presented showed that the new issues Williams sought to raise were clearly stronger than the issue presented by appellate counsel, upon which Williams prevailed. *State ex rel. Williams v. State*, No. 2013AP173-W, unpublished slip op. and order (WI App Feb. 5, 2013).

Williams’ first argument is that the circuit court “erroneously exercised its discretion” by “wholesale adopting” the State’s circuit court brief without explanation. As pointed out in the State’s appellate brief, it appears that Williams has confused his 2015 postconviction proceedings with the proceedings underlying this appeal. In 2015 but not in 2019, the State filed a written response opposing Williams’ WIS. STAT. § 974.06 postconviction motion. In its 2015 decision but not its 2019 decision, the circuit court “adopt[ed] the reasoning of the State’s Response in deciding the Defendant’s Motion without further elaboration.” Though it refers to the 2015 proceedings, the circuit court’s 2019 decision provides additional information and reasoning relevant to the current § 974.06 postconviction motion. Further, Williams has not filed a reply brief and we deem this a tacit admission of the State’s position. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (a proposition asserted by a respondent on appeal and not disputed in the appellant’s reply is taken as admitted).

Turning to Williams’ primary argument, he asserts that the circuit court erred by denying his postconviction motion without holding an evidentiary hearing to determine whether his trial counsel provided ineffective assistance by conceding Williams’ guilt of hiding a corpse during closing arguments. The State counters that Williams’ claim is barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 184-86, 517 N.W.2d 157 (1994) (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 also* § 974.06(4).³

³ Williams suggests that the ineffective assistance of appellate counsel provides his sufficient reason for not raising this claim earlier but, as the State points out, this argument would require this court
(continued)

Having considered the merits of Williams' concession-of-guilt claim, we conclude that the circuit court properly denied Williams' WIS. STAT. § 974.06 motion without an evidentiary hearing because trial counsel's comments and closing arguments did not constitute a concession of Williams' guilt in violation of *McCoy*.

In closing argument, Williams' attorney meticulously went through the trial evidence and vigorously argued that the State did not meet its burden to prove that Williams committed the crime of hiding a corpse. Defense counsel repeatedly asserted that the only evidence of Williams' involvement was the testimony of M.C., the woman he allegedly kidnapped and who, according to counsel, was not credible. Counsel argued that although M.C. likely used her vehicle to help someone else hide the corpse at issue, the State failed to prove Williams' involvement. Maintaining that nothing other than M.C.'s testimony tied Williams to the crime, counsel emphasized that the evidence did not support M.C.'s story:

[M.C.] said my client drove [her] car throughout the State of Wisconsin ... without gloves. There is no evidence of that. No physical evidence of that whatsoever. The prints that were found in there were comparable to [M.C.'s] and [M.C.'s] alone and that's the interior and exterior of the car. Nothing. So there is no evidence my client was in that car because nobody witnessed him in that car. Nobody saw him get in on the surveillance footage or out.... Nobody ever testified they witnessed my guy in that car. [M.C.] said he was there. The evidence, again, doesn't support her story. No prints on any of the weapons, frankly. No prints on the 43-inch pipe. No prints on the T-joint. No prints on this. Nada.

to ignore that Williams filed an intervening pro se WIS. STAT. § 974.06 postconviction motion. Williams also argues, and the State refutes, that the issuance of *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), after his 2015 pro se motion might provide a reason sufficient to overcome any procedural bar. We need not analyze the propriety of applying a procedural bar in this case because, as set forth below, we instead address Williams' claim on the merits.

To support his concession-of-guilt claim, Williams points to the following hypothetical questions posed by his attorney during closing argument:

The State offered a lot of other acts evidence as circumstantial proof of my client's motive in hiding a corpse. Do we need any proof or evidence of his motive in hiding a corpse? He didn't want to get in trouble. Do you think we have to have ten witnesses of other acts evidence to prove the fact that my client didn't want to get in trouble and that's why he hid a corpse because he would be charged with murder? No. Anyway, motive is not an element. Motive is self[-]eviden[t] in this case. Didn't want to get into trouble. Neither did she. That's why they did what they did.

We agree with the State that, when read in context, Williams' attorney was not conceding guilt as to the charge of hiding a corpse. Rather, defense counsel was attempting to highlight the lack of direct evidence of Williams' guilt and suggesting that the State's other-acts evidence on "motive" was a red herring introduced for the purpose of showing that Williams was "of poor character." Indeed, woven throughout Williams' closing argument was the notion that the jury should stay focused on the credible direct evidence and not on the other-acts evidence which is "not proof of anything except for it makes my client look like a jerk again."

Ultimately, defense counsel characterized the trial as "Long on evidence that my client is a jerk. Short on evidence" that he committed the crimes charged. Counsel explicitly asked the jury to acquit Williams on both charges, stating: "I want you to weigh the evidence that shows my client kidnapped [M.C.] and weigh the evidence that shows my client was present and dumped the body in Riverside Park. And I think when you do that, you will come to the same conclusion that I have. That this man is not guilty of those offenses...." Similarly, in concluding his lengthy closing argument, defense counsel stated, "I think when you weigh all this evidence, folks, I think you will come to the same conclusion I have. I think you will find that Raymond Williams is not guilty of kidnapping or hiding a corpse. Thank you."

Given these explicit statements to the jury, along with the myriad ways defense counsel sought to undermine the State's case, the isolated comments Williams relies on cannot reasonably be construed as conceding Williams' guilt on the charge of hiding a corpse.

Moreover, as previously noted, Williams is no longer convicted of hiding a corpse because this court reversed his conviction on that count in his direct appeal. In addition, Williams has not filed a reply brief and we deem the State's argument to be admitted by Williams. *See Schlieper*, 188 Wis. 2d at 322.

Finally, in his conclusion, Williams apparently seeks a new trial in the interest of justice. *See* WIS. STAT. § 752.35 (allowing this court to reverse in its discretion "if it appears from the record that the real controversy has not been fully tried, or that it is probable that justice has for any reason miscarried"). We deny the request. Williams has not persuaded us that there was any error, let alone an error of sufficient magnitude to justify this extraordinary relief. *See State v. Schutte*, 2006 WI App 135, ¶62, 295 Wis. 2d 256, 720 N.W.2d 469 (this court exercises its discretionary reversal power sparingly, and in only the most exceptional cases).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is 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