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DISTRICT II

December 21, 2022

To:

Hon. Mark F. Nielsen
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
Electronic Notice

Jimmie Anzualda, #81959
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:

2022AP351

State of Wisconsin v. Jimmie Anzualda (L.C. #1986CF530)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Jimmie Anzualda, pro se, appeals from an order of the circuit court which denied his postconviction motion seeking to vacate his judgments of conviction. 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 (2019-20).¹ We affirm.

In 1987, Anzualda pled no contest to second-degree murder and to felon in possession of a firearm, and he was sentenced to consecutive sentences of thirty-five and eight years,

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

respectively. On January 12, 2022, Anzualda filed a “Motion for Censure” seeking to vacate his judgments of conviction, arguing that the circuit court lacked “jurisdiction” to accept his no contest pleas.

The circuit court denied the motion, concluding it had jurisdiction to accept Anzualda’s no contest pleas because the complaint and information state “probable cause to believe that the crime occurred and that the defendant committed the crime” and Anzualda appeared and pled no contest in open court. Anzualda appeals.

While Anzualda asserts that the circuit court lacked jurisdiction to accept his no contest pleas, it is unclear whether he is challenging the court’s subject matter jurisdiction or personal jurisdiction. Thus, we will address both.

Article VII, section 8 of the Wisconsin Constitution, along with WIS. STAT. § 753.03, confers jurisdiction on a circuit court. *State v. West*, 214 Wis. 2d 468, 481-82, 571 N.W.2d 196 (Ct. App. 1997). “Criminal subject[]matter jurisdiction is the ‘power of the court to inquire into the charged crime, to apply the applicable law and to declare the punishment.’” *State v. Webster*, 196 Wis. 2d 308, 316, 538 N.W.2d 810 (Ct. App. 1995) (alteration in original; citation omitted). “The circuit court ‘lacks criminal subject[]matter jurisdiction only where the complaint does not charge an offense known to law.’” *Id.* at 317 (alteration in original; citation omitted). Personal jurisdiction, addressed in WIS. STAT. § 939.03, “assures that the defendant has a sufficient relationship to the jurisdiction exercising authority and that the defendant has notice of the charges.” *State v. Smith*, 131 Wis. 2d 220, 239, 388 N.W.2d 601 (1986), *abrogated on other grounds by State v. Felix*, 2012 WI 36, 339 Wis. 2d 670, 811 N.W.2d 775.

A no contest plea “waives” all objections to personal jurisdiction but not subject matter jurisdiction.² See *State v. Schroeder*, 224 Wis. 2d 706, 711, 593 N.W.2d 76 (Ct. App. 1999). We review de novo the question of whether a circuit court had subject matter jurisdiction. *Id.* We also review de novo questions of waiver, such as waiver of personal jurisdiction here. See *State v. Trammell*, 2019 WI 59, ¶16, 387 Wis. 2d 156, 928 N.W.2d 564.

Anzualda pled no contest and, by doing so, waived his right to object to personal jurisdiction on appeal. See *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886. And because Anzualda was charged with and pled no contest to offenses known to law, i.e., first-degree murder, second-degree murder and felon in possession of a firearm, the circuit court had subject matter jurisdiction. See *Webster*, 196 Wis. 2d at 317.³

² While “[c]ourts refer to this as the guilty-plea-waiver rule,” our supreme court has recognized that “the term ‘waiver’ as used here does not convey the usual meaning of an intentional relinquishment of a known right”; rather, “the effect of a guilty plea is to cause the defendant ‘to forego the right to appeal a particular issue.’” *State v. Kelty*, 2006 WI 101, ¶18 & n.11, 294 Wis. 2d 62, 716 N.W.2d 886 (acknowledging that “a more accurate label would be the ‘guilty-plea-forfeiture’ rule, or something to that effect.”). In discussing the effect of the guilty-plea-waiver rule, we have used the terms waiver and forfeiture interchangeably. See *State v. Villegas*, 2018 WI App 9, ¶44-49, 380 Wis. 2d 246, 908 N.W.2d 198. And we note that whether a claim is forfeited is also a question of law we review independently. *State v. Coffee*, 2020 WI 1, ¶17, 389 Wis. 2d 627, 937 N.W.2d 579. In the end, whether we call it waiver or forfeiture, the result is the same.

³ Anzualda seems to argue that the circuit court had to affirmatively establish its jurisdiction. This is not the case; the burden is on the party raising the challenge to jurisdiction. *State ex rel. R.G. v. W.M.B.*, 159 Wis. 2d 662, 668, 465 N.W.2d 221 (Ct. App. 1990).

Therefore,

IT IS ORDERED that the order of the circuit court is 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