



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

January 23, 2024

To:

Hon. Mitchell J. Metropulos
Circuit Court Judge
Electronic Notice

Barb Bocik
Clerk of Circuit Court
Outagamie County Courthouse
Electronic Notice

Thomas C. Bellavia
Electronic Notice

Gerald W. Doxtator 484694
Jackson Correctional Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2022AP148

Gerald W. Doxtator v. Lizzie Tegels (L. C. No. 2003CF234)

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

Gerald Doxtator, pro se, appeals both an order denying his petition for a writ of habeas corpus and an order denying his motion for reconsideration. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We dismiss the appeal for lack of jurisdiction. *See* WIS. STAT. RULE 809.21 (2021-22).¹

In 2005, Doxtator was convicted of one count of repeated sexual assault of a child and sentenced to twenty years of initial confinement followed by ten years of extended supervision.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Doxtator did not pursue a direct appeal of his conviction. He subsequently petitioned this court for a writ of habeas corpus pursuant to *State v. Knight*, 168 Wis. 2d 509, 512-13, 484 N.W.2d 540 (1992), alleging that his appellate counsel was ineffective with respect to both determining whether an appeal would have arguable merit and advising Doxtator of his options pursuant to *State ex rel. Flores v. State*, 183 Wis. 2d 587, 605-07, 516 N.W.2d 362 (1994). Following a remand for fact finding, this court denied the *Knight* petition in May 2011.

Ten years later, Doxtator filed the underlying habeas petition in the circuit court seeking to vacate his judgment of conviction and to be released from custody. Citing *McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452 (2020), Doxtator argued that because he is a member of the Oneida Tribe, his crime was committed on the Oneida Reservation, and the crime of sexual abuse of a child is covered by 18 U.S.C. § 1153 (2018)² (Major Crimes Act), jurisdiction over that crime belonged to the federal courts, not to the Wisconsin state court. On July 22, 2021, the court conducted a hearing on the habeas petition and issued an oral decision denying it. The court found that Congress, via 18 U.S.C. § 1162 (Public Law 280), had given Wisconsin criminal jurisdiction over the Oneida Reservation; that *McGirt* was distinguishable because Oklahoma, unlike Wisconsin, had not been granted criminal jurisdiction by a federal statute like Public Law 280; and that the Menominee Reservation's exemption from Public Law 280 did not apply to the Oneida Reservation. A written order denying the petition was entered on July 27, 2021.

² All references to the United States Code are to the 2018 version.

On August 2, 2021, Doxtator moved for reconsideration of the order denying his habeas petition, again claiming that federal jurisdiction under the Major Crimes Act trumped state jurisdiction over his crime. Doxtator twice amended his reconsideration motion and, on December 20, 2021, he sought a hearing on his motion. At the end of a January 26, 2022 hearing, the circuit court denied the reconsideration motion, again distinguishing the decision in *McGirt* from the present matter. A written order denying Doxtator's reconsideration motion was entered on January 27, 2022.

On January 31, 2022, Doxtator filed a notice of appeal from the July 27, 2021 order denying his petition for a writ of habeas corpus.³ Then, on February 3, 2022, he filed a notice of appeal from the January 27, 2022 order denying his reconsideration motion.⁴ This court questioned whether we have jurisdiction to review either order and directed the parties to address this court's jurisdiction as a threshold issue in their briefs.

In a civil matter in which no notice of entry of judgment is given, a notice of appeal must be filed within ninety days after entry of the judgment or order appealed from. *See* WIS. STAT. § 808.04(1). This court lacks jurisdiction if a notice of appeal is not timely filed. WIS. STAT. RULE 809.10(1)(e). The timely filing of a reconsideration motion under WIS. STAT. § 805.17(3), however, alters the appeal deadlines and delays the commencement of appeal periods until the

³ The notice of appeal refers to a July 22, 2021 order. Although the order was signed on that date, it was not entered until July 27, 2021. *See* WIS. STAT. § 807.11 (stating that an order is entered when it is filed in the office of the clerk of court). The failure of the notice of appeal to correctly identify the final appealable document is not, by itself, fatal to appellate jurisdiction. *See Carrington v. St. Paul Fire & Marine Ins. Co.*, 169 Wis. 2d 211, 217 n.2, 485 N.W.2d 267 (1992).

⁴ Although the notice of appeal refers to a January 26, 2022 order, the written order was entered on January 27, 2022.

reconsideration motion is decided or ninety days after the entry of the judgment, whichever occurs first.⁵ *Id.* If the circuit court does not resolve a reconsideration motion within ninety days, then that motion is deemed denied, and the time for initiating an appeal commences ninety days after entry of the initial order. *Id.*

Here, Doxtator’s initial ninety-day deadline for appealing the July 27, 2021 order was October 25, 2021. He timely filed a reconsideration motion, thus extending the October 25, 2021 deadline pursuant to WIS. STAT. § 805.17(3). When the circuit court did not resolve the reconsideration motion within ninety days of the July 27, 2021 order, it was deemed denied by operation of § 805.17(3), and Doxtator’s ninety-day appeal period began to run on the ninetieth day after the initial order, or October 25, 2021, making his new appeal deadline January 24, 2022. That the court ultimately decided the motion beyond the ninety-day deadline for doing so does not alter the statute’s application. Because Doxtator’s January 31, 2022 notice of appeal was not timely filed as to the July 27, 2021 order, we lack jurisdiction to review that order.

⁵ WISCONSIN STAT. § 805.17(3) provides, in relevant part:

Upon its own motion or the motion of a party made not later than 20 days after entry of judgment, the court may amend its findings or conclusions or make additional findings or conclusions and may amend the judgment accordingly.... If the court amends the judgment, the time for initiating an appeal commences upon entry of the amended judgment. If the court denies a motion filed under this subsection, the time for initiating an appeal from the judgment commences when the court denies the motion on the record or when an order denying the motion is entered, whichever occurs first. If within 90 days after entry of judgment the court does not decide a motion filed under this subsection on the record or the judge, or the clerk at the judge’s written direction, does not sign an order denying the motion, the motion is considered denied and the time for initiating an appeal from the judgment commences 90 days after entry of judgment.

Although the February 3, 2022 notice of appeal was timely filed as to the January 27, 2022 order denying reconsideration, an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silvertown Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). The concern is that a reconsideration motion should not be used to extend the time to appeal from a judgment or order when that time has expired. *Id.*; *see also Ver Hagen v. Gibbons*, 55 Wis. 2d 21, 25-26, 197 N.W.2d 752 (1972). Whether a party's motion for reconsideration raises a new issue "presents a question of law that this court reviews de novo." *State v. Edwards*, 2003 WI 68, ¶7, 262 Wis. 2d 448, 665 N.W.2d 136.

Doxtator asserts that his reconsideration motion raised for the first time the claim that his crime was exempt from state-court jurisdiction by virtue of the "codified Public Law 280 Menominee Exemption." We are not persuaded. At the July 2021 hearing on Doxtator's habeas petition, the circuit court asked Doxtator if he was claiming that the Oneida Tribe's jurisdictional status under Public Law 280 was the same as that of the Menominee Tribe, and Doxtator replied in the affirmative. When the court asked whether Doxtator had any authority to support his contention that the Oneida Tribe's jurisdictional status was the same as that of the Menominee Tribe, Doxtator stated, "I don't have that here right now."

Doxtator nevertheless asserts that his reconsideration motion raised a new issue because it referred for the first time to the express exemption of the Menominee Tribe in the text of the original, 1953 version of Public Law 280. A mere citation to an earlier version of Public Law 280 does not present a new legal claim. Accordingly, we lack jurisdiction to review the order denying reconsideration. *See Silvertown Enters.*, 143 Wis. 2d at 665. Because we lack

jurisdiction to review the only order from which Doxtator timely appealed, we must dismiss this appeal.

Upon the foregoing,

IT IS ORDERED that the appeal is dismissed for lack of jurisdiction.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals