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DISTRICT II

April 3, 2013

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

2012AP1465 State of Wisconsin v. Daniel W. Urbschat (L.C. #1998CF293)

Before Brown, C.J., Reilly and Gundrum, JJ.

Daniel W. Urbschat appeals pro se from an order denying his WIS. STAT. § 974.06 (2011-12)[1] motion seeking to vacate his conviction, judgment and sentence to permit withdrawal of his guilty plea. The trial court denied Urbschat's motion without a hearing on the basis that his claims are procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). We agree and affirm. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

In 1998, Urbschat pled guilty to second-degree sexual assault of a child as a repeater and was sentenced to thirty years in prison. A year later, appointed counsel filed a no-merit report. Urbschat filed a response raising factual allegations relevant to his plea and the effective assistance of trial counsel. The report was rejected and Urbschat's WIS. STAT. RULE 809.30 appeal rights were reinstated.

New appointed counsel determined that the factual allegations would not support an ineffectiveness claim but concluded that whether the plea had a factual basis had arguable merit. Counsel advised Urbschat that plea withdrawal could result in a reinstatement of the original charge first-degree sexual assault, however, exposing him to a fifty-year prison term. Urbschat personally decided not to withdraw his plea. He argued only that his sentence was unduly harsh. The trial court denied his motion to modify the sentence.

In mid-2000, counsel filed a no-merit report addressing the court's exercise of sentencing discretion. Urbschat's response alleged that trial counsel provided "false and misleading information" about the plea agreement; the presentence investigation report contained "misleading and tainted evidence"; the victim-impact statement was not admitted; his own statement was excluded; the trial court imposed too harsh a sentence; and responsibility for the crime actually lay with the child's guardian, who failed to protect the boy from a person she knew had a prison record and "surfed" the internet for "young relationships." This court concluded that there were no arguably meritorious appellate issues.

In July 2011, Urbschat filed a postconviction motion asserting that the parole board's finding that he was ineligible for parole was a new factor entitling him to sentence modification. The trial court summarily denied the motion as untimely under WIS. STAT. § 973.19; not a

constitutional or jurisdictional challenge under WIS. STAT. § 974.06; procedurally barred under ***Escalona-Naranjo***; and not presenting a "new factor" warranting sentence modification. Four months later, Urbschat filed a postconviction motion seeking plea withdrawal on grounds that his plea was deficient; trial counsel did not effectively explain the plea conditions and consequences; and postconviction counsel ineffectively advised him against seeking plea withdrawal. The trial court again denied the motion as procedurally barred.

In May 2012, Urbschat filed the WIS. STAT. § 974.06 motion leading to this appeal. He requested an evidentiary hearing to show that trial counsel ineffectively failed to seek suppression based on ***Miranda v. Arizona***, 384 U.S. 436 (1966), misadvised him on the plea agreement, and failed to allow him to review and correct the PSI, causing him to be denied parole; that postconviction counsel ineffectively failed to assert that the criminal complaint was defective; that elements of the charged crime were not proved;[2] and that he did not knowingly, intelligently, and voluntarily enter his plea. The trial court again concluded that ***Escalona-Naranjo*** barred the motion. Urbschat appeals.

A prisoner must raise all grounds for relief in his or her original, supplemental or amended postconviction motion. ***Escalona-Naranjo***, 185 Wis. 2d at 185; *see also* WIS. STAT. § 974.06. This encompasses a direct appeal. *See* ***State v. Lo***, 2003 WI 107, ¶32, 264 Wis. 2d 1, 665 N.W.2d 756. Successive motions and appeals are procedurally barred unless the defendant can show a "sufficient reason" for failing to previously raise the newly alleged errors. *See*

[2] Urbschat apparently meant that the State agreed to let him plead to second-degree sexual assault because it did not believe it could prove the intent element of first-degree and, therefore, his counsel's advice to not withdraw his plea was faulty.

Escalona-Naranjo, 185 Wis. 2d at 185. Whether the procedural bar applies to a postconviction claim is a question of law we review de novo. ***State v. Tolefree***, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Despite numerous opportunities to raise these issues earlier, Urbschat has not shown a "sufficient reason" for failing to do so. While we recognize the court's obligation to liberally construe a pro se litigant's motions, *see* ***Amek bin-Rilla v. Israel***, 113 Wis. 2d 514, 521-22, 335 N.W.2d 384 (1983), pro se litigants still generally are held to the same rules that apply to lawyers on appeal, and "must satisfy all procedural requirements," ***Waushara County v. Graf***, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Allowing Urbschat to circumvent those rules would be contrary to ***Escalona-Naranjo***'s policy of "finality in ... litigation." *See* ***Escalona-Naranjo***, 185 Wis. 2d at 185.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals