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DISTRICT II

July 3, 2013

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

2012AP2267 State of Wisconsin v. Lawrence J. Gould (L.C. # 2001CF14)

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

Lawrence Gould appeals *pro se* from a circuit court order denying his WIS. STAT. § 974.06 (2011-12)[1] motion. The State argues on appeal that Gould's claims are barred under ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because he did not raise the claims in his WIS. STAT. RULE 809.32 appeal from his conviction. ***State v. Allen***, 2010 WI 89, ¶¶40-41, 328 Wis. 2d 1, 786 N.W.2d 124. Based upon our review of the briefs and record,

[1] All subsequent references to the Wisconsin Statutes are to the 2011-12 version.

we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21. We affirm the circuit court because the ***Escalona*** bar applies.

Gould appealed his child enticement conviction via a WIS. STAT. RULE 809.32 (2001-02) no-merit appeal. Gould did not file a response to his appointed counsel's no-merit report. We affirmed Gould's conviction in June 2003. ***State v. Gould***, No. 2002AP3231-CRNM, unpublished op. and order (WI App June 11, 2003). In our opinion affirming Gould's conviction, we concluded that there would be no arguable merit to an appellate challenge to Gould's no contest plea and his twenty-five-year sentence was a proper exercise of circuit court discretion. ***Id.*** at 2-3.

In September 2012, Gould filed a WIS. STAT. § 974.06 motion alleging that his First Amendment rights were violated when the circuit court considered the views of the presentence investigation report author that Gould's sexual fantasies made him a risk to the community.[2] Gould also asserted a self-incrimination claim and contended that the State breached the plea agreement at sentencing when it noted that Gould thought poorly of the presiding judge. Gould also argued that the State used perjured testimony to convict him, and he alleged that the sexual assault was physically impossible.[3] The circuit court denied Gould's WIS. STAT. § 974.06 motion.

[2] We conclude below that Gould's WIS. STAT. § 974.06 motion is barred. Even if the motion were not barred, we would conclude that this issue lacks merit. Whether a defendant poses a risk to public safety is a proper consideration at sentencing. ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76.

[3] The repeated sexual assault of a child charge was dismissed and read-in as part of Gould's plea agreement.

All of Gould's WIS. STAT. § 974.06 claims arise from the record created at the time of Gould's conviction and no-merit appeal. These claims could have been raised in a response to counsel's no-merit report in his direct appeal. Gould's § 974.06 motion did not offer a reason, let alone a sufficient reason, for failing to raise his claims in his no-merit appeal. ***Allen***, 328 Wis. 2d 1, ¶¶4-5, 41.

In Gould's no-merit appeal, we reviewed the record and concluded that there would be no issue with arguable merit for appeal. We properly followed the no-merit procedures. ***Allen***, 328 Wis. 2d 1, ¶32. Therefore, Gould's prior no-merit appeal serves as a procedural bar to his § 974.06 motion because the motion raised issues that could have been raised in his no-merit appeal. *See* ***State v. Tillman***, 2005 WI App 71, ¶27, 281 Wis. 2d 157, 696 N.W.2d 574.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals