COURT OF APPEALS
DECISION
DATED AND FILED

September 11, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2920 **Cir. Ct. No. 1990CF904071**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRANZE CURTIS SHARP,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: CHARLES F. KAHN, JR., Judge. *Affirmed*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Terranze Curtis Sharp appeals from an order denying his motion for postconviction relief. The issues are whether the circuit court lost competency to proceed by not holding a fact-finding hearing within twenty days of Sharp's plea hearing on a contested delinquency petition, and for

the alleged ineffectiveness of trial and postconviction counsel for failing to pursue that issue. We conclude that the State's petition to waive jurisdiction of children's court tolled the twenty-day time limits, thereby rendering the fact-finding hearing timely, and did not deprive the circuit court of competency. Consequently, the related ineffective assistance claims also fail. Therefore, we affirm.

¶2 Sharp was alleged delinquent for first-degree intentional homicide, in violation of WIS. STAT. § 940.01(1) (eff. Jan. 1, 1989). The death occurred on September 26, 1990; Sharp was fifteen years old. The delinquency petition was filed October 3, 1990. On October 4, 1990, the State filed a petition to waive the jurisdiction of children's court and refer Sharp to the jurisdiction of the criminal court. The waiver petition indicated that the hearing on that petition was scheduled for October 10, 1990 in front of Milwaukee County Circuit Court Judge Ronald S. Goldberger. The hearing was instead held before Milwaukee County Circuit Court Judge John A. Franke on November 16, 1990, who granted the petition and waived jurisdiction to criminal court. Sharp was subsequently convicted of first-degree intentional homicide and sentenced to life imprisonment, becoming eligible for parole in twenty years. A no-merit appeal followed. After considering the report, Sharp's response, and independently reviewing the record, we affirmed the judgment of conviction. *See* ***Anders v. California***, 386 U.S. 738, 744-45 (1967).

¶3 In 2006, postconviction counsel filed a motion for sentence modification pursuant to WIS. STAT. RULE 809.30 (2005-06). The circuit court denied the motion because the appellate time limits of RULE 809.30 had long since expired. Postconviction counsel also lost her license to practice law shortly thereafter.

¶4 Approximately six months after the circuit court denied Sharp's postconviction motion for sentence modification, Sharp filed a *pro se* postconviction motion, alleging that the circuit court lost competency to proceed on the homicide charge when it failed to timely conduct a fact-finding hearing. He also alleged that trial and postconviction counsel were ineffective for trial counsel's failure to move to dismiss the petition on jurisdictional grounds, and for postconviction counsel's failure to pursue trial counsel's ineffectiveness. The circuit court denied the motion as procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 185-86, 517 N.W.2d 157 (1994) and ***State v. Tillman***, 2005 WI App 71, ¶¶25-27, 281 Wis. 2d 157, 696 N.W.2d 574 because Sharp alleged no reason why he personally could not have raised this issue in response to the no-merit report. Sharp appeals.

¶5 Although Sharp responded to the no-merit report and could have raised this issue, it is an issue of procedure that requires some degree of sophistication. Consequently, we independently conclude that if we neglected to analyze this issue as we were obliged to do in Sharp's no-merit appeal pursuant to ***Anders***, 386 U.S. 744-45, we did not follow the no-merit procedures, and may not apply ***Tillman***'s procedural bar. *See* ***Tillman***, 281 Wis. 2d 157, ¶20; *see also* ***State v. Fortier***, 2006 WI App 11, ¶27, 289 Wis. 2d 179, 709 N.W.2d 893.

¶6 As we have seen, Sharp contends that the circuit court's failure to conduct a fact-finding hearing within twenty days results in a loss of circuit court competency pursuant to ***Michael J. L. v. State***, 174 Wis. 2d 131, 141, 496 N.W.2d

758 (Ct. App. 1993).[1] The statutory section on which Sharp relies is WIS. STAT. § 48.30(7) (1989-90), which provides:

> If the … petition is contested, the court shall set a date for the fact-finding hearing which allows reasonable time for the parties to prepare but is no more than 20 days from the plea hearing for a child who is held in secure custody.

There is no dispute that Sharp was held in secure custody, or that the delinquency petition was filed on October 3, 1990, and that the fact-finding hearing was ultimately held on November 16, 1990, rather than on October 10, 1990, as contemplated by the State's waiver petition, filed October 4, 1990.

¶7 WISCONSIN STAT. § 48.315(1)(a) (1989-90) provides:

> **(1)** The following time periods shall be excluded in computing time requirements within this chapter:
>
> (a) Any period of delay resulting from other legal actions concerning the child, including an examination under s. 48.295 or a hearing related to the child's mental condition, prehearing motions, *waiver motions* and hearings on other matters.

(Emphasis supplied.) The State filed its waiver motion on October 4, 1990; it was decided November 16, 1990. Consequently, the twenty-day time period of WIS. STAT. § 48.30(7) was tolled for the forty-three days the waiver motion was pending pursuant to § 48.315(1)(a). Thus, the fact-finding hearing also held November 16, 1990 was timely, and there was no loss of competency pursuant to

[1] Sharp also relies on ***State v. Michael T.***, No. 92-2658, unpublished slip op. (May 11, 1993). As an unpublished opinion, we do not rely on it, nor should Sharp have cited it. *See* WIS. STAT. RULE 809.23(3) (2005-06).

§ 48.30(7). The related ineffective assistance claims against trial and postconviction counsel necessarily fail.[2]

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

[2] Sharp also claimed that postconviction counsel was ineffective for filing a sentence modification motion pursuant to WIS. STAT. RULE 809.30 (2005-06), approximately fifteen years after his judgment of conviction was entered, and for failing to advise him of her impending suspension from the practice of law. Sharp did not appeal from the circuit court's denial of that postconviction order, and his current postconviction motion did not raise those claims. Consequently, we do not consider them. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980), *superseded on other grounds by* WIS. STAT. § 895.52.

On appeal, Sharp also claims that appellate counsel was ineffective for failing to pursue a conventional (as opposed to a no-merit) appeal raising the jurisdictional issue. He failed to raise this issue in his postconviction motion. Therefore, we do not review it. *See* ***id.*** Our decision, however, implicitly rejects his substantive claim against appellate counsel.