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DISTRICT II

October 5, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Racine County Courthouse
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Brad L. Bates, #367072
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You are hereby notified that the Court has entered the following opinion and order:

2020AP340

State of Wisconsin v. Brad L. Bates (L.C. #2005CF1506)

Before Neubauer, Grogan 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).

Brad L. Bates appeals pro se from an order denying his WIS. STAT. § 974.06 (2019-20)¹ motion for postconviction relief, and from an order denying reconsideration. 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. We affirm.

In 2007, Bates pled guilty to four charges: (1) first-degree reckless injury while armed with a dangerous weapon; (2) aggravated battery with intent to cause bodily harm, while armed

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

with a dangerous weapon; (3) criminal trespass to a dwelling; and (4) disorderly conduct with use of a dangerous weapon. The charges stemmed from a November 2005 incident in which “Bates entered the home of [the victim], punched her several times with a closed fist, and stabbed her in the neck with enough force that the knife blade broke off in her neck.” *State v. Bates*, No. 2009AP8-CRNM, unpublished op. and order, at 2 (WI App Mar. 3, 2010).

Bates’s postconviction counsel filed a motion for postconviction relief, seeking a *Machner*² hearing, plea withdrawal, and a restitution hearing. The circuit court denied the motion after an evidentiary hearing.

Bates’s postconviction counsel then filed a “comprehensive” no-merit report pursuant to WIS. STAT. RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967). The report identified eleven potential issues, including whether the allegations of the complaint were sufficient for a factual basis for the charges and issues involving the plea. Bates filed a “lengthy” response to the no-merit report alleging additional issues.

This court issued an opinion and order addressing the no-merit report and the additional issues Bates raised. *Bates*, No. 2009AP8-CRNM. After our “independent review of the record,” we rejected each argument and accepted the report, finding no arguably meritorious appellate issues. *Id.* at 2. We summarily affirmed the judgment of conviction and the circuit court’s order denying Bates’s motion for postconviction relief. *Id.* at 7.

² See *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

In 2019, over a decade after the conclusion of his no-merit appeal, Bates filed his WIS. STAT. § 974.06 motion. Bates asserted the circuit court failed to conduct an adequate plea colloquy when it accepted Bates’s plea to aggravated battery with intent to cause bodily harm without ascertaining whether a factual basis existed to support the plea, that the allegations of the criminal complaint were insufficient to constitute aggravated battery, and that his postconviction counsel provided ineffective assistance for not raising these issues. The circuit court denied Bates’s claims at a non-evidentiary hearing. Bates moved for reconsideration, asserting that the circuit court failed to ensure that he understood the great bodily harm element of reckless injury and aggravated battery and failed to establish a sufficient factual basis for those charges. The court denied the motion without a hearing. Bates now appeals.

WISCONSIN STAT. § 974.06(4) bars a defendant from bringing postconviction claims, including constitutional claims, that could have been raised in a previous postconviction motion or on direct appeal, unless the defendant has a “sufficient reason” for failing to do so. *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). A claim brought under § 974.06 is also barred if it has been finally adjudicated during a previous appeal. *Id.* These rules exist to promote “finality in our litigation.” *Id.* at 185. “A matter once litigated may not be relitigated in a subsequent postconviction proceeding no matter how artfully the defendant may rephrase the issue.” *State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Whether any of Bates’s claims brought pursuant to WIS. STAT. § 974.06 are barred by the application of *Escalona-Naranjo* presents a question of law which we review de novo. *See State v. Tolefree*, 209 Wis. 2d 421, 424, 563 N.W.2d 175 (Ct. App. 1997).

Bates's first appeal in 2009 proceeded under our no-merit procedures. *See* WIS. STAT. RULE 809.32. The *Escalona-Naranjo* procedural bar applies to no-merit appeals as long as the proper no-merit procedures were followed and those procedures warrant confidence in the outcome. *See State v. Tillman*, 2005 WI App 71, ¶¶2, 19-20, 281 Wis. 2d 157, 696 N.W.2d 574 (extending procedural bar to no-merit appeals); *State v. Allen*, 2010 WI 89, ¶¶62, 328 Wis. 2d 1, 786 N.W.2d 124 (explaining that, if the court of appeals follows the no-merit protocol, the defendant receives review of issues whether or not they were expressly raised).

Bates did not allege in his 2019 motion that the no-merit procedure was not followed in his first appeal, but even if he had, the record conclusively demonstrates that the no-merit procedure was properly followed. This court addressed eleven potential issues raised in the no-merit report and Bates's response, and rejected each argument. This court also conducted its own independent review of the record and determined that there were no arguably meritorious appellate issues.

Moreover, Bates's current challenges were largely addressed in the no-merit decision, and his attempts to rephrase the issues are unavailing. As regards Bates's contention that the allegations of the complaint were insufficient to show a factual basis for the charges, this court noted in the no-merit decision that "Bates stipulated that the complaint and preliminary hearing testimony provided a sufficient factual basis to support the guilty pleas." *Bates*, No. 2009AP8-CRNM, at 4.

As the State aptly details, this court also addressed the adequacy of the plea colloquy, concluding that the circuit court "properly confirmed that Bates understood that the State would have to prove that he caused [the victim] great bodily harm and intended to cause her bodily

harm.” *Id.* at 3. We noted that “Bates signed the plea questionnaire indicating he understood the charges to which he was pleading and the constitutional rights he was giving up. The [circuit] court confirmed that Bates understood.” *Id.* at 4. We concluded: “The record shows that, despite any cognitive deficits, Bates understood his guilty plea and its ramifications. No issue of merit exists from the plea taking.” *Id.*

We see nothing in Bates’s current challenge to the circuit court’s plea colloquy that undermines our confidence in these conclusions. Bates acknowledges that the circuit court told him that great bodily harm means bodily injury “which creates a substantial risk of death.” The court confirmed with Bates that the criminal complaint contained a sufficient factual basis for the plea. The complaint alleged that Bates stabbed the victim in her neck and that the knife broke off in her neck. It alleged that officers investigating the incident learned from a doctor who treated the victim that “the knife blade imbedded in [the victim’s] neck was very close to her carotid artery.” Bates’s contention that this does not provide a factual basis for the element of great bodily harm—bodily injury which creates a substantial risk of death—in the first-degree reckless injury and aggravated battery charges is without merit. Nor is there basis to question the adequacy of the plea. Consequently, Bates’s associated contention that counsel was ineffective in failing to identify these issues, which is his alleged “sufficient reason” for raising these issues in his 2019 postconviction motion rather than in response to the no-merit report, is likewise without merit.³ See *Escalona-Naranjo*, 185 Wis. 2d at 181; *State v. Luedtke*, 2014 WI App 79,

³ Bates’s additional contentions that the plea colloquy was inadequate because the court failed to tell him that he had a right to an attorney and to tell him what an attorney could do for him are equally unavailing. Bates was represented by counsel.

¶28, 355 Wis. 2d 436, 851 N.W.2d 837 (recognizing that an attorney is not ineffective for failing to raise meritless claims).

In sum, Bates has failed to provide us with anything that “undermine[s] our confidence in the [circuit] court’s decision,” he has not identified any “issue of such obvious merit that it was an error by the court not to discuss it,” and he has not shown there was a failure to follow the proper no-merit procedure. *See Allen*, 328 Wis. 2d 1, ¶83. Therefore, we are confident the no-merit procedure was followed, and the application of *Escalona-Naranjo*’s procedural bar here is appropriate.

Therefore,

IT IS ORDERED that the orders of the circuit court are summarily affirmed, pursuant to 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