COURT OF APPEALS
DECISION
DATED AND FILED

November 18, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP259 **Cir. Ct. No. 2002CF1321**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC M. WALKER,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County: STEPHANIE G. ROTHSTEIN, Judge. *Affirmed.*

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

¶1 PER CURIAM. Eric M. Walker, *pro se*, appeals an order of the circuit court denying his motion for postconviction relief. Walker also appeals an order denying his reconsideration motion. We agree with the circuit court's

construction of Walker's motion as one for relief under WIS. STAT. § 974.06, and we agree with the application of a procedural bar. We therefore affirm the orders.

BACKGROUND

¶2 According to the criminal complaint, Walker and another man fired guns into a car, injuring the driver and killing the driver's one-year-old son. Walker pled guilty to first-degree reckless homicide, while armed, as party to a crime, and one count of first-degree recklessly endangering safety. The circuit court imposed consecutive sentences totaling forty-three years' initial confinement and twenty-five years' extended supervision.

¶3 Walker filed a postconviction motion seeking plea withdrawal. He alleged that his pleas were involuntary because trial counsel had guaranteed a particular sentence and failed to object to an alleged breach of the plea bargain by the State. The circuit court denied the motion without a hearing. Walker appealed, but we summarily affirmed. *See* ***State v. Walker***, No. 2003AP1835-CR, unpublished slip op. & order (WI App July 15, 2004).

¶4 In 2008, Walker filed a *pro se* postconviction motion under § 974.06, again seeking plea withdrawal. He contended that the circuit court failed to conform its plea colloquy to the requirements of WIS. STAT. § 971.08, so his plea was not knowing, intelligent, and voluntary because he did not understand concepts of "utter disregard for human life" or party-to-a-crime liability. The circuit court granted an evidentiary hearing but ultimately denied the motion. Walker appealed, and we affirmed. *See* ***State v. Walker***, No. 2010AP2016, unpublished slip op. (WI App Oct. 4, 2011).

¶5 In December 2013, Walker filed in the circuit court a document that he titled "Petition for Common Law Writ of Habeas Corpus." He alleged that he received ineffective assistance of counsel during his original appeal as of right when postconviction counsel failed to bring a postconviction motion to preserve "the most significant and obvious defect in the plea colloquy"—namely, the circuit court's failure to comply with WIS. STAT. § 971.08 and ensure that Walker understood the meaning of "criminally reckless conduct"—and instead raised "frivolous ineffective assistance of trial counsel claims."[1]

¶6 The circuit court construed Walker's petition as a WIS. STAT. § 974.06 motion, denying it as procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Walker moved for reconsideration, insisting that his request for relief was a petition for *habeas corpus* under WIS. STAT. § 782.01, not a § 974.06 motion. The circuit court denied the motion, explaining that a motion's contents, not its title, determine the nature of the motion. Walker appeals.

DISCUSSION

¶7 First, we must address Walker's insistence that he filed a petition for a writ of *habeas corpus* and not a WIS. STAT. § 974.06 motion. In ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 681, 556 N.W.2d 136, 139 (Ct. App. 1996), we concluded "that a claim of ineffective assistance of postconviction counsel should be raised in the [circuit] court either by a petition for habeas corpus or a motion under" § 974.06. We also expressly noted that § 974.06 "was

[1] "Criminally reckless conduct" is an element of both first-degree reckless homicide and first-degree recklessly endangering safety. *See* WIS JI—CRIMINAL 1020 & 1345.

designed to supplant habeas corpus," while acknowledging that a writ petition may still be appropriate in some circumstances. *See* ***id.***, 205 Wis. 2d at 681, n.7, 556 N.W.2d at 139 n.7; *see also* ***State v. Knight***, 168 Wis. 2d 509, 520, 484 N.W.2d 540, 544 (1992).

¶8 Walker insists that he has filed a writ petition because the ultimate error of which he complains—the circuit court's supposed non-adherence to WIS. STAT. § 971.08—is only a statutory violation, and relief under WIS. STAT. § 974.06 is limited to constitutional and jurisdictional errors. *See* ***State v. Carter***, 131 Wis. 2d 69, 80–82, 389 N.W.2d 1, 5–6 (1986). However, Walker himself points out that one of the criteria for securing *habeas* relief is that the petitioner is subject to restraint "imposed contrary to constitutional protections or by a body lacking jurisdiction." *See* ***State v. Pozo***, 2002 WI App 279, ¶8, 258 Wis. 2d 796, 802, 654 N.W.2d 12, 15.

¶9 Moreover, we look to the facts pleaded, not the document's label, to determine whether relief is warranted. *See* ***bin-Rilla v. Israel***, 113 Wis. 2d 514, 521, 335 N.W.2d 384, 388 (1983). Walker is, ultimately, alleging constitutional errors. The right to the effective assistance of counsel is a constitutional right. *See* ***Strickland v. Washington***, 466 U.S. 668, 686 (1984). Additionally, the legislature enacted WIS. STAT. § 971.08 as a means of establishing certain requirements to ensure that a guilty plea is knowing, intelligent, and voluntary, as constitutionally required by due process. *See* ***State v. Cross***, 2010 WI 70, ¶16, 326 Wis. 2d 492, 502–503, 786 N.W.2d 64, 69. Thus, Walker's claim for relief is one that can be brought under WIS. STAT. § 974.06. As *habeas corpus* is not available if a petitioner has another remedy available, *see* ***Pozo***, 2002 WI App 279, ¶8, 258 Wis. 2d at 802, 654 N.W.2d at 15, the circuit court properly treated Walker's submission as a § 974.06 motion.

¶10 A motion brought under WIS. STAT. § 974.06 is typically barred when filed after a direct appeal unless the defendant shows a sufficient reason why he did not or could not raise the issues previously. *See* ***Escalona***, 185 Wis. 2d at 185, 517 N.W.2d at 163–164; *see also* § 974.06(4). Walker explains that he did not raise his current claim—that the circuit court failed to comply with WIS. STAT. § 971.08 by ensuring he understood "criminally reckless conduct"—at some earlier point because postconviction counsel was ineffective. Such ineffective assistance may constitute a sufficient reason. *See* ***Rothering***, 205 Wis. 2d at 682, 556 N.W.2d at 139. However, while ineffective postconviction counsel might explain why the current issue regarding Walker's understanding of "criminally reckless conduct" was not raised in the direct appeal decided in 2004, it does not explain Walker's own failure to raise the issue in his 2008 *pro se* motion.

¶11 Walker thus also contended that he did not raise his current issue earlier because of "his alleged unawareness of the claim at the time of the [WIS. STAT.] § 974.06 motion" in 2008. He claims that the supreme court, in ***State v. Allen***, 2010 WI 89, 328 Wis. 2d 1, 786 N.W.2d 124, held that ignorance of the law constitutes a sufficient reason. However, this is not the proper reading of ***Allen***.

¶12 The paragraph in ***Allen*** on which Walker relies states:

> Whatever reason the defendant offers as a "sufficient reason"—ignorance of the facts or law underlying the claim, an improperly followed no-merit proceeding, or ineffective assistance of counsel—the defendant must allege specific facts that, if proved, would constitute a sufficient reason for failing to raise the issues in a response to a no-merit report. If a defendant fails to do so, the circuit court should summarily deny the motion, as the circuit court appropriately did.

Id., 2010 WI 89, ¶91, 328 Wis. 2d at 33–34, 786 N.W.2d at 140. This is not an unqualified adoption of "ignorance of the law" as a sufficient reason.[2] Rather, it simply reaffirms the necessity of proper pleading to obtain relief.

¶13 Walker asserts that he properly pled ignorance of his claim, by averring that he was "completely unaware that I was not provided with an essential element of the charged crimes" until a jailhouse lawyer so informed him. However, Walker was already fully aware of the legal basis for his claim, given that his 2008 motion alleged that his plea "was accepted without the trial court's conformance to Wis. Stats. Sec[.] 971.08, or other mandatory procedures stated therein." *Cf.* ***Allen***, 2010 WI 89, ¶44, 328 Wis. 2d at 20–21, 786 N.W.2d at 133 (no sufficient reason when law on ineffective assistance of counsel was well-established at time of defendant's original appeal and postconviction motion failed to allege any change in law between then and time of motion).

¶14 Further, Walker has not adequately pled ignorance of the factual basis for this claim. The relevant facts have existed since the time Walker entered his plea, and the circuit court's purported failure to engage him in a proper plea colloquy was an event in which Walker was personally involved and of which he had personal knowledge. *See* ***id.***, 2010 WI 89, ¶48, 328 Wis. 2d at 21, 768 N.W.2d at 134. Walker also does not establish how he came to realize that the circuit court failed to ensure he understood the element of "utter disregard for

[2] Nor do we believe that the supreme court would make such an adoption, as it is well-established that ignorance of the law is no defense. *See* ***Putnam v. Time Warner Cable of SE Wisconsin Limited Partnership***, 2002 WI 108, ¶13 n.4, 255 Wis. 2d 447, 458 n.4, 649 N.W.2d 626, 632 n.4.

human life"—the basis for his 2008 motion—without simultaneously learning about the "criminally reckless conduct" element.

¶15 Walker has, therefore, failed to provide sufficient reason to justify the timing for raising his current claim that the circuit court failed to conduct a proper plea colloquy by ensuring Walker understood the meaning of "criminally reckless conduct." This issue could have been raised in his prior postconviction motion. Accordingly, we agree with the circuit court's denial of the motions.

By the Court.—Orders affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.