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DISTRICT IV

September 10, 2015

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

2014AP673

State of Wisconsin v. Reo L. Covington (L.C. # 2002CF913)

Before Kloppenburg, P.J., Lundsten and Higginbotham, JJ.

Reo Covington appeals a circuit court order denying his motion for postconviction relief filed pursuant to WIS. STAT. § 974.06 (2013-14).¹ 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 summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Covington was convicted of one count of robbery with use of force, after entering a guilty plea. He was sentenced to five years of initial confinement and five years of extended supervision. Covington later filed a petition for sentence adjustment, seeking early release from the initial confinement portion of his sentence. The circuit court granted the unopposed petition, and Covington was released on extended supervision. His extended supervision was administratively revoked, and the Department of Hearings and Appeals ordered that Covington be reconfined for a period of four years. Since then, Covington has filed four pro se motions that he identified as being brought pursuant to WIS. STAT. § 974.06. All of those motions were denied by the circuit court.

This appeal concerns the circuit court's denial of Covington's fourth and most recent WIS. STAT. § 974.06 motion. In that motion, Covington alleged that his plea was not knowingly, voluntarily, or intelligently entered and should be withdrawn because he was not informed of the direct consequences of his plea, his counsel was ineffective for failing to inform him of those consequences, and he was under the effect of prescribed medication at the time of his plea that caused him not to understand. The motion also challenged Covington's 2012 revocation of extended supervision.

We turn first to Covington's plea withdrawal arguments. The State asserts that Covington's plea withdrawal arguments are procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The State correctly points out that Covington previously challenged his plea in his second WIS. STAT. § 974.06 motion, filed in September of 2012, and that he fails to allege a sufficient reason for failing to raise his current plea withdrawal arguments either in the September 2012 motion or his other previous postconviction motions. We agree with the State that Covington's current plea withdrawal

arguments are procedurally barred under *Escalona-Naranjo*, 185 Wis. 2d at 185, such that the circuit court properly denied the motion in that respect.

We turn next to Covington’s challenge to the revocation of his extended supervision. Review of a revocation decision of the Division of Hearings and Appeals concerning whether to revoke a person’s extended supervision “may be sought only by an action for certiorari.” WIS. STAT. § 302.113(9)(g). Even if Covington had styled his request for relief in the form of a certiorari petition, which he did not, such a petition would have been untimely. Pursuant to WIS. STAT. § 893.735(2), a remedy available by certiorari made on behalf of a prisoner is barred unless commenced within 45 days after the cause of action accrues. In this case, Covington’s extended supervision was revoked in February 2012. His current challenge to his revocation was not filed until December 17, 2013.

We are satisfied, based on all of the above, that the circuit court properly denied Covington’s motion for postconviction relief.

IT IS ORDERED that the order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals