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March 10, 2016

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

2015AP18

State of Wisconsin v. William R. Shaw (L.C. #2009CF3605)

Before Kessler, Brennan and Brash, JJ.

William R. Shaw, *pro se*, appeals orders denying his postconviction motions filed under Wis. STAT. § 974.06 (2013-14).¹ The circuit court concluded that Shaw's claims are procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Upon our review of the briefs and record, we conclude at conference that this matter is

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

appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily affirm the orders.

In 2011, Shaw pled guilty to one count of delivering cocaine as a second or subsequent offense. The circuit court imposed a sentence of two years and six months of initial confinement and two years of extended supervision. The court stayed the sentence and placed Shaw on probation for two years. Shaw did not pursue a direct appeal from the judgment of conviction.

After Shaw's probation was revoked, he filed a series of *pro se* postconviction motions. As relevant here, he filed a motion on September 2, 2014, requesting an "emergency injunction." He claimed he had newly discovered evidence that he was illegally arrested because "the arrest warrant wasn't signed until days later after [he] was in custody." By order entered September 3, 2014, the circuit court denied the motion because it was belied by the record, which contains an arrest warrant dated as signed on the day before Shaw's arrest. Shaw renewed his request for an "emergency injunction" on September 12, 2014, reiterating his belief that his arrest was unlawful because "the warrant was not signed" and alleging numerous violations of his constitutional rights as a result. By order entered September 17, 2014, the circuit court construed the motion as a request for reconsideration and denied the requested relief, pointing to not only the signed warrant in the record but also the findings of a predecessor judge who had determined during pretrial proceedings that police arrested Shaw pursuant to a signed warrant.

Shaw next filed a postconviction motion on October 24, 2014, stating that he sought relief under WIS. STAT. § 974.06. He alleged that the circuit court failed to complete an evidentiary hearing and rule on his motion to suppress identification, his trial counsel was ineffective, and he was arrested pursuant to an unsigned warrant. By order dated October 27,

2014, the circuit court denied the motion, explaining that Shaw's postconviction litigation in September 2014 barred him from pursuing additional postconviction motions under § 974.06 absent a sufficient reason for failing to raise his claims during earlier proceedings. Two days later, Shaw filed a document entitled "postconviction motion amended." In this motion, he alleged he was denied his right to a speedy trial and that he was denied due process because the State failed to produce a confidential informant on a day when the trial was adjourned. By order entered on October 31, 2014, the circuit court concluded that these claims were also procedurally barred.

On December 30, 2014, Shaw filed a notice of appeal from the orders entered on October 27, 2014, and October 31, 2014.² As set forth in his appellate brief, he seeks to raise the following seven issues:

1[.] Should the arrest warrant be rendered invalid, because it was not signed upon issuance?

2[.] Is the arrest warrant unconstitutional, due to the fact it is open-ended[?]

3. Did the circuit court ever establish jurisdiction over Mr. Shaw, with the back-dating and false return of the warrant after Mr. Shaw was arrested and placed in custody?

4. Did the circuit court have authority to back-date and falsely return the arrest warrant after Mr. Shaw's arrest?

² Shaw has not sought appellate review of the orders entered on September 3, 2014, and September 17, 2014. We note for the sake of completeness that his deadlines for filing notices of appeal to challenge those orders lapsed on December 2, 2014, and December 16, 2014, respectively. *See* WIS. STAT. § 808.04 (where the time for appeal has not been reduced by a notice of entry of judgment, appeal must be filed within ninety days of entry of a final order or judgment). With exceptions not applicable here, the deadline for filing a notice of appeal cannot be extended. *See* WIS. STAT. RULE 809.82(2)(b). Accordingly, we lack jurisdiction to review the September 2014 orders. *See* WIS. STAT. RULE 809.10(1)(e) (timely notice of appeal necessary to confer jurisdiction).

5. Was it a Manifest of Injustice [sic], and unreasonable for the DA's office to file two criminal complaints charging the same exact offense, without official notification, or informing Mr. Shaw of the double jeopardy processes, and hindering Mr. Shaw from contesting or challenging this arbitrary procedure[?]

6. Did the circuit court rely on inaccurate information, abuse its discretion by barring Mr. Shaw's postconviction motion, and construing his emergency injunction motion, as postconviction motions [?]

7. Does deceptive and arbitrary procedures, of back dating arrest warrants, altering court record docket entries, and the concealment of fraudulent acts constitute 'sufficient reason' under ss. 974.06(4) for not asserting these claims in his previous motions to the court[?]

WISCONSIN STAT. § 974.06 is the mechanism for a convicted prisoner to raise constitutional and jurisdictional claims after the time for a direct appeal has passed. *See State v. Henley*, 2010 WI 97, ¶¶52-53, 328 Wis. 2d 544, 787 N.W.2d 350. As the supreme court long ago explained, however, “[w]e need finality in our litigation.” *See Escalona-Naranjo*, 185 Wis. 2d at 185. Therefore, all grounds for relief must be included in a convicted person's original, supplemental, or amended postconviction motion. *Id.* at 181. Additional claims are barred unless the person demonstrates a sufficient reason for failing to allege or adequately raise the claims in the prior proceeding. *Id.* at 181-82.

Shaw did not invoke WIS. STAT. § 974.06 in his September 2014 motions for an “emergency injunction.” Nonetheless, courts are required to look beyond the label that a prisoner applies to pleadings to determine if he or she is entitled to relief. *See bin-Rilla v. Israel*, 113 Wis. 2d 514, 521, 335 N.W.2d 384 (1983). Here, the motions Shaw filed in September 2014 include constitutional claims that are cognizable under § 974.06. Moreover, “there is no legislative history which restricts ‘original, supplemental or amended motion’ to a motion brought solely under sec. 974.06.” *Escalona-Naranjo*, 185 Wis. 2d at 181. Therefore, Shaw's

September 2014 motions bar the claims he raised in the later motions filed in October 2014 absent a sufficient reason for his failure to litigate all of the claims in the earlier proceedings. We independently determine whether a convicted person has offered a sufficient reason for serial litigation. *See State v. Romero-Georgana*, 2014 WI 83, ¶30, 360 Wis. 2d 522, 849 N.W.2d 668.

Shaw alleges that he had a sufficient reason to raise claims about the allegedly unsigned arrest warrant in his October 2014 motions, namely, that he did not know about “the back dated, and falsely returned warrant.... [T]hese acts were concealed.” Shaw’s contentions are patently untrue. He plainly knew about the alleged defects in the warrant when he filed his motions in September 2014: he complained in those motions that the warrant was unsigned and that he had suffered a deprivation of his constitutional rights as a consequence. He therefore fails to offer a sufficient reason for relitigating his claims about the allegedly unsigned warrant. Those claims are barred. *See Escalona-Naranjo*, 185 Wis. 2d at 181-82.

Shaw also includes claims in his appellate brief that the arrest warrant was illegal because it was “open ended” and that the State violated his constitutional rights because it allegedly filed two criminal complaints in this case. These claims are not properly before this court because Shaw failed to raise them in the circuit court proceedings. We do not consider issues raised for the first time on appeal. *See State v. Dowdy*, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691.

Finally, the State points out that Shaw has not included in his appellate brief any argument in regard to claims he raised in the circuit court alleging: (1) an unresolved suppression motion; (2) ineffectiveness of his trial counsel; (3) the confidential informant’s failure to appear; and (4) the violation of his right to a speedy trial. Shaw elected not to file a reply brief, and we therefore conclude that he concedes his abandonment of these issues on

appeal. *See State v. Normington*, 2008 WI App 8, ¶44, 306 Wis. 2d 727, 744 N.W.2d 867 (appellant's failure to refute a proposition constitutes a concession). We will not consider issues that an appellant has abandoned. *See State v. Ledger*, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993).

Therefore,

IT IS ORDERED that the circuit court orders of October 27, 2014, and October 31, 2014, are summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals