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DISTRICT IV

April 25, 2016

To:

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

2013AP2698-CR State of Wisconsin v. Titus Henderson (L.C. # 2012CF253)

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

Titus Henderson appeals a criminal judgment convicting him of battery by a prisoner. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] For the reasons discussed below, we reject each of the six issues Henderson raises on appeal, and affirm the judgment of conviction.

First, Henderson contends that he was not tried by a valid or qualified tribunal because the circuit court judge and district attorney did not file oaths of office and bonds with the

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

Secretary of State's office as he believes was required under WIS. STAT. § 19.01, and the district attorney had a conflict of interest. Henderson misinterprets § 19.01. That statute does not, as Henderson believes, require judges and district attorneys to file oaths and bonds. Rather, the statute specifies *what form* oaths and bonds are to take, and *where* they are to be filed, *if they are required by other statutory provisions*. WISCONSIN STAT. § 757.02 requires judges to take and file an oath of office, but does *not* require them to file bonds. Similarly, Henderson points to no other current provision that requires district attorneys to file bonds. The record shows that the State produced copies of both the judge's oath of office and the district attorney's oath of office. As to the alleged conflict of interest, we agree with the State that the mere fact that the district attorney's husband worked as a prison guard at a different correctional facility did not create a conflict of interest. Therefore, there was no impediment to the judge presiding over the trial, or the district attorney prosecuting the case.

Second, Henderson contends that the circuit court should have granted him a continuance of the trial date due to absent witnesses. The circuit court has discretion whether to grant a continuance to secure a witness, taking into account factors such as the materiality of the proposed witness's testimony, whether the moving party has been guilty of any neglect in seeking to secure the witness, and whether there is a reasonable expectation that the witness can be located. ***Bowie v. State***, 85 Wis. 2d 549, 556-57, 271 N.W.2d 110 (1978). The court exercised its discretion by noting that Henderson was aware of the trial date when Henderson discharged counsel, and by explaining why Henderson's proposed witnesses were not material and how Henderson's repetitive motions amounted to little more than delaying tactics.

Third, Henderson contends that he was prejudiced by wearing restraints and prison clothes at trial. However, the record shows that the electronic device Henderson wore at trial

was not visible to the jury. Furthermore, because the charge here was battery by a prisoner, the fact that Henderson was wearing jail clothes indicating his status as a prisoner did not provide any information to the jury that they did not already know.

Fourth, Henderson asserts that the jury did not represent a racially balanced cross-section of the community. However, the circuit court made a record that the voir dire pool of potential jurors had been chosen randomly from official data pools, such as voter lists, not by any systematic racially discriminatory means. Nor does the record show that any potential juror members in the pool were excluded on racial grounds.

Fifth, Henderson's argument that he was denied his right to counsel by being forced to choose among competing constitutional rights—namely, that he was "forced" to proceed pro se because prison officials would not forward his mail to counsel—is also defeated by the record. Henderson told the court that the reason he was discharging counsel was that counsel would not file the motions Henderson wanted, including one relating to the issue of interference with his legal mail. The court contacted the prison and determined that the reason prison officials were not sending out some of Henderson's mail was that Henderson did not have sufficient funds in his account to pay for postage, not that prison officials were holding him "incommunicado" unless he discharged counsel, as he now claims. In sum, Henderson's choice was whether to accept counsel's professional judgment as to what motions to file, or to represent himself. That choice did not deprive him of any constitutional rights.

Sixth, Henderson claims that the circuit court lacked personal jurisdiction over him due to lack of service of the complaint as well as the judge's lack of bond. We have already rejected the bond claim above, and Henderson waived any objection to service of the complaint by not

raising the issue when he entered his initial plea at the preliminary hearing. *See* ***State v. Monje***, 109 Wis. 2d 138, 145, 325 N.W.2d 695 (1982).

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

Diane M. Fremgen
Clerk of Court of Appeals