

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 1, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1529

Cir. Ct. No. 2005CF10

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIAN A. MAUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Langlade County: LEON D. STENZ, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Brian Maus, pro se, appeals a judgment of conviction for armed burglary with a dangerous weapon and armed robbery with threat of force, both as a party to a crime, and felony bail jumping. Maus also

appeals an order denying his postconviction motion. Maus presents approximately eighteen separate claims for relief. We affirm.

BACKGROUND

¶2 The criminal complaint alleged Maus and two others, their faces wrapped in Ace bandages, broke into the victim's home and took approximately \$15,650. Maus was out on bond on a pending Langlade County felony firearm charge at the time of the intrusion. The complaint further alleged that one of the intruders held the victim at gunpoint and knifepoint and said to her, "[T]his is the last time you're going to be mean to me." Based on his voice, mannerisms and what he said, the victim identified the intruder as Maus. At the preliminary hearing, the victim explained she knew Maus from school, and had contact with him ten to fifteen times in the previous year.

¶3 The complaint alleges the victim reported the getaway vehicle was a white four-door car with license plate number VBN-641. Approximately one hour after the robbery, a Langlade County sheriff's deputy spotted a matching vehicle with plate number VBN-671 registered to Margaret Maus.¹ The vehicle was in Langlade County when located by the deputy, but crossed into Marathon County prior to being stopped. The driver of the vehicle was Margaret's son, Maus.

¶4 While still represented by appointed counsel (his second, third and fourth) between September 2005 and April 2006, Maus submitted sixty-five pro se filings with the court raising numerous claims. Following an April 13 hearing, the

¹ The dispatcher followed up with the victim, and one of them suggested the plate number may have been VBN-671. However, the audio recording was lost. We do not deem the one-digit discrepancy material to any of the issues Maus raises.

court permitted Maus to proceed pro se. The court addressed some of the claims raised in his pro se filings at hearings held May 25 and November 17. At Maus's request in November, counsel was again appointed to represent him. From November 2006 to July 2009, a succession of three attorneys was appointed to represent Maus and they withdrew over disputes stemming from their refusal to pursue claims they determined were meritless, and Maus's belligerent conduct. Maus proceeded pro se at trial after refusing representation by his last appointed attorney and being informed the court would not appoint another.

¶5 Appointed postconviction/appellate counsel filed a no-merit notice of appeal on Maus's behalf in March 2012. We subsequently granted counsel's motion to withdraw based on Maus's disorderly, disruptive and disrespectful behavior and his grievance filed with the Office of Lawyer Regulation. We dismissed the no-merit appeal to allow Maus to appeal pro se.

¶6 Maus filed an eighty-five-page postconviction motion with fifteen exhibits. The circuit court denied the motion after a hearing. Maus appeals.

DISCUSSION

¶7 Maus's pro se, forty-seven-page handwritten brief is barely legible. His record citations are to entire documents and he largely fails to provide adequate background information or legal argument in support of his approximately eighteen claims. His brief consists almost entirely of conclusory allegations.

¶8 Maus asserts that postconviction/appellate counsel Karyn Missimer was ineffective for failing to pursue certain claims, and that she "illegally withdrew" from representation. Missimer refused to pursue the claims because

she had an ethical duty not to do so upon determining the claims were meritless. *See State ex rel. Flores v. State*, 183 Wis. 2d 587, 621, 516 N.W.2d 362 (1994). Regardless, any claim that Missimer was ineffective is moot because Maus was able to personally raise his claims after his no-merit appeal was dismissed and his case remanded for him to file a postconviction motion. Further, Missimer did not “illegally withdraw”; she successfully moved to withdraw based on Maus’s inappropriate behavior.

¶9 Maus next argues five trial attorneys were ineffective for failing to file motions raising various claims Maus wanted them to pursue. Again, nearly all of Maus’s ineffective assistance of trial counsel claims are moot because he had the opportunity to raise the various claims once he was allowed to proceed pro se. The only claim Maus could not later raise was that the complaint stated only “lies,” and not probable cause, which was forfeited because it was not raised before the preliminary hearing. But, as we discuss below, counsel was not ineffective for failing to challenge the complaint because such a claim would have been rejected.

¶10 Maus contends he was “forced to represent himself because all of [his] attorneys were incompetent.” Maus appears to argue his attorneys were incompetent because they refused to file motions on his behalf raising claims they deemed frivolous. However, trial counsel, like appellate counsel, have an ethical duty not to raise arguments they believe to be meritless. *See State v. Johnson*, 2007 WI 32, ¶14 n.4, 299 Wis. 2d 675, 729 N.W.2d 182. Maus’s attorneys correctly determined his claims lacked merit. Maus raised the claims in trial court and in this appeal, and they lack merit for the reasons set forth in the discussions of each claim. Maus was not “forced” to represent himself. He knowingly and

willingly chose to represent himself so could make the various arguments his attorneys declined to make.

¶11 Maus asserts the trial court or the State forced counsel on him. However, the court granted Maus's request to proceed pro se at an April 13, 2006 hearing, and he represented himself at trial. To the extent he suggests his first two rounds of pro se motions in September and October 2005 constituted an implicit assertion of the right to self-representation, those filings were inadequate to invoke the right. *See State v. Darby*, 2009 WI App 50, ¶24, 317 Wis. 2d 478, 766 N.W.2d 770 (the invocation of the right to self-representation must be clear and unequivocal).

¶12 Maus argues that his arrest in Marathon County one hour after the robbery was not supported by probable cause, and that the Langlade County sheriff's deputy who arrested him lacked authority to do so. During a May 2006 hearing, the circuit court heard testimony from officers involved in the robbery investigation. According to the dispatch report, the victim reported she recognized one of the suspects' voices as Maus, whom she knew from school. The victim also reported the getaway vehicle's color and make, and license plate number as VBN-641. A similar plate number, VBN-671, was registered to Maus's mother. Based on this information, the circuit court properly determined that, when the deputy spotted a vehicle with plate number VBN-671 matching the color and make of the getaway vehicle one hour after the robbery, he had probable cause to stop and arrest Maus. Further, the Langlade County deputy's arrest was a proper "fresh pursuit" arrest. *See* WIS. STAT. § 175.40(2),² *State v. Haynes*, 2001 WI

² All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

App 266, ¶6, 248 Wis. 2d 724, 638 N.W.2d 82. The deputy spotted the vehicle in Langlade County, immediately pursued it, and completed the stop only one-half mile into Marathon County.

¶13 Maus argues the trial court erroneously failed to suppress a “false statement” officer Ben Baker took from Maus while he was in custody. Maus does not provide sufficient background to meaningfully address this claim. He does not explain what the statements were, or for what purpose they were admitted at trial. We reject the argument as inadequately developed. *See State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994) (“We will not decide issues that are not, or inadequately, briefed.”). In any event, the State reviewed the record in an attempt to respond, and we agree with the trial court’s and State’s analysis.

¶14 Maus claims the sheriff’s department violated several of his constitutional rights because it never conducted a voice line-up for the victim to attempt to identify him. Maus offers no authority for the proposition that law enforcement was required to administer a voice line-up. *See id.* (we need not consider arguments not supported by legal authority). A voice line-up was unnecessary because the victim recognized Maus’s voice at the time of the crime.

¶15 Maus argues the criminal complaint “didn’t state any probable cause but a bunch of lies.” Maus does not contend the allegations fail to constitute probable cause as to any elements of any of the charged crimes. Rather, he simply asserts the allegations are “a bunch of lies” The accuracy of the allegations is a matter for the jury. We reject the argument as inadequately developed. *See id.*

¶16 Maus contends he was denied his right to a speedy trial. To demonstrate a speedy trial violation, Maus must identify the various delays in the

proceedings, and explain which delays should be charged to the State. *See State v. Borhegyi*, 222 Wis. 2d 506, 511-13, 588 N.W.2d 89 (Ct. App. 1998). Maus does not attempt to identify any delays attributable to the State. We therefore reject the argument as inadequately developed. *See Flynn*, 190 Wis. 2d at 39 n.2. Moreover, it appears much of the delay in the case is attributable to Maus's repeated conflicts with his attorneys and serial filings. The record reveals at least seven changes of counsel, and Maus submitted countless pro se filings while represented, including sixty-five filings from September 26, 2005 to April 12, 2006 alone.

¶17 Maus claims the prosecutor “suppressed” witnesses by declining to call Beverly, Larry and David Faust at trial, in violation of Maus's constitutional rights. The Fausts were listed as proposed rebuttal witnesses to discredit Maus's alibi. Maus cites no authority demonstrating the prosecutor was required to call rebuttal witnesses. *See id.* Maus was, of course, free to subpoena and call the witnesses if he believed their testimony was necessary to his defense.

¶18 Maus argues the trial court erroneously excluded evidence that the victim was involved in the drug trade, the stolen money was drug money, and a particular deputy had investigated the victim for dealing drugs. Evidentiary rulings are reviewed under the erroneous exercise of discretion standard, and will be upheld “if there is a rational basis for a circuit court's decision.” *Martindale v. Ripp*, 2001 WI 113, ¶29, 246 Wis. 2d 67, 629 N.W.2d 698. The circuit court properly denied Maus's attempts to introduce evidence that the money was drug money because (1) the money's source was irrelevant to whether Maus committed the crime of robbery, and (2) the court determined within its discretion that the drug evidence was highly prejudicial. Maus's right to present a defense does not include an absolute right to present any evidence that might damage the credibility

of his accusers. *See State v. St. George*, 2002 WI 50, ¶¶50-52, 252 Wis. 2d 499, 643 N.W.2d 777.

¶19 Maus asserts a juror was biased against him because she told an investigator two years after trial that “it was a joke that [Maus] represented himself.” The juror’s comments do not demonstrate either subjective or objective bias. *See State v. Funk*, 2011 WI 62, ¶¶37-38, 335 Wis. 2d 369, 799 N.W.2d 421. The fact she believed Maus did a poor job representing himself does not demonstrate she based her verdicts on anything other than the facts in evidence. Further, Maus’s argument is entirely conclusory, and we reject it as undeveloped. *See Flynn*, 190 Wis. 2d at 39 n.2.

¶20 Finally, Maus contends there were multiple instances of misconduct by Langlade County officials, including the judge and the prosecutor. Maus’s allegations are either unsupported or belied by the record. The arguments do not merit individual attention, and we reject them as undeveloped. *See id.* Further, the record shows the trial court was a model of patience, restraint, and fairness with Maus, who repeatedly made baseless accusations of official misconduct against the judge and prosecutor and was prone to profanity-laden outbursts in court.

By the Court.—Judgment and order affirmed.

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

