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DISTRICT IV

August 28, 2025

To:

Hon. Nicholas J. McNamara
Circuit Court Judge
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Frank John Remington
Electronic Notice

Aman D. Singh
Electronic Notice

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

2025AP19-CR State of Wisconsin v. Aman D. Singh (L.C. # 2004CT882)

Before Graham, P.J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Aman Singh challenges a circuit court order that denied his postconviction motion for sentence modification and his postconviction motion that asked the court to use its inherent authority to vacate a 2005 judgment of conviction. Based on my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. I affirm.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

In 2005, Singh pled no contest to and was convicted of operating a motor vehicle while under the influence of an intoxicant (OWI) as a second offense. The conduct in question occurred on July 20, 2003, when Singh crashed his vehicle through a barbed wire fence and the responding officer determined that he was intoxicated. The charges were elevated to an OWI second because, the State alleged, Singh had previously been convicted of an OWI-related offense in Illinois in September 2001. Singh was sentenced to ten days in jail and was ordered to pay a fine, and his license was revoked for fifteen months.

This is Singh's sixth appeal seeking to challenge aspects of the 2005 conviction. *See* ***State v. Singh***, No. 2015AP850-CR, unpublished slip op. (WI App Jan. 7, 2016) (***Singh I***); ***State v. Singh***, No. 2017AP1609, unpublished slip op. (WI App July 26, 2018) (***Singh II***); ***State v. Singh***, No. 2018AP2412-CR, unpublished slip op. (WI App Apr. 16, 2020) (***Singh III***); ***State v. Singh***, No. 2021AP1111-CR, unpublished slip op. (WI App Aug. 18, 2022) (***Singh IV***); ***State v. Singh***, No. 2023AP509, unpublished op. and order (WI App Feb. 15, 2024) (***Singh V***).

In his latest motion, which is the subject of the current appeal, Singh sought two types of relief: he asked the circuit court to modify his sentence based on a new factor, and he asked the court to use its inherent authority to vacate his conviction. Both arguments are based on the same underlying theory—that, based the facts that existed on July 20, 2003, and the statutory and case law that exists today, he would not have been convicted of OWI second.

Specifically, Singh argues, his first offense was for refusing to take a blood test, and that offense can no longer be counted as a prior OWI offense under WIS. STAT. §§ 343.307(1) and 346.65(2)(am), which sets forth a graduated penalty scheme for repeat OWI offenders. Singh's argument is based on ***State v. Forrett***, 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422, which

determined that §§ 343.307(1) and 346.65(2)(am) are "unconstitutional to the extent [that] they count a prior, stand-alone revocation resulting from a refusal to submit to a warrantless blood draw as an offense for the purpose of increasing the criminal penalty." ***Forrett***, 401 Wis. 2d 678, ¶14. Singh contends that the holding of ***Forrett*** should be applied retroactively to his conviction for OWI second, and that retroactively applying that holding, he should have been charged with and penalized for a first OWI offense rather than a second.[2] Under the circumstances, Singh argues, he is entitled to an unspecified modification of his sentence, and the court should use its inherent authority to vacate the conviction altogether.

Singh raised the same substantive argument under various different procedural mechanisms in ***Singh IV*** and ***Singh V***. In both of those prior appeals, this court determined that regardless of whether ***Forrett*** could or should be retroactively applied to the 2005 conviction, Singh was not entitled to the relief he sought under the procedural vehicles that he had pursued. Therefore, in both appeals, this court determined that there was no need to determine whether ***Forrett*** could or should be retroactively applied. The decision to decline to resolve this issue is consistent with the generally recognized principle that appellate courts should decide appeals on the narrowest grounds, and should not address issues that are not necessary to dispose of the appeal. ***State v. Castillo***, 213 Wis. 2d 488, 492, 570 N.W. 2d 44 (1997).

[2] For purposes of this opinion, I assume without deciding that Singh's assertion—that his first offense was from a prior, stand-alone revocation resulting from his refusal to submit to a warrantless blood draw in Illinois—is factually accurate. As noted in ***State v. Singh*** (***Singh V***), No. 2023AP509, unpublished op. and order at *1 n.2 (WI App Feb. 15, 2024), the record does not contain any documentation from Illinois that supports or refutes Singh's assertion.

Here, as in the prior appeals, Singh has not shown that he is entitled to the relief he seeks, even if ***Forrett*** could and should be retroactively applied.[3] Like the prior courts, I could decline to address the issue that is at the core of Singh's appeal—his assertion that ***Forrett*** applies retroactively to his case. However, in the interest of providing resolution on this point, I briefly consider and reject Singh's argument about ***Forrett***'s retroactive application, as well as his argument that the circuit court did not have subject matter jurisdiction over his case.

I begin with Singh's argument about retroactivity. Singh relies on retroactivity principles that apply when a case announces a "new rule of constitutional law." *See* ***Montgomery v. Louisiana***, 577 U.S. 190, 197-202 (2016); *see also* ***State v. Lagundoye***, 2004 WI 4, ¶¶11-13, 268 Wis. 2d 77, 674 N.W.2d 526. If the new rule is "procedural," it will "not apply, as a general matter, to convictions that were final when the new rule was announced." ***Montgomery***, 577 U.S. at 198. By contrast, if the new rule is "substantive," it will "presumptively [be] applied retroactively to all cases, whether on direct appeal or on collateral review." ***Lagundoye***, 268 Wis. 2d 77, ¶12. Here, it is undisputed that Singh's conviction was final decades ago, so ***Forrett***

[3] As for sentence modification, Singh was sentenced to ten days in jail in 2005, and the circuit court ordered Singh to report to the Dane County Jail to begin serving his sentence on July 6, 2005. Singh failed to report to jail on that date, and the court entered a bench warrant commanding his apprehension so that he could be brought to the jail to serve his sentence. A deputy sheriff arrested Singh pursuant to the warrant and delivered him to the court. Singh does not credibly assert that he has any unserved time remaining on his 10-day jail sentence. Nor does Singh provide any authority that would require a court to modify a jail sentence that has already been served, or to order a partial refund of a fine that has already been paid, based on a new development in the law. Singh cites ***State v. Socha***, Nos. 2021AP1083-CR and 2021AP2116-CR, unpublished slip op. (WI App Apr. 25, 2023), but that case does not fill the void. Not only is it nonprecedential, but also, it appears that the defendant in that case had time left to serve on the sentences he sought to modify.

As for Singh's request that the circuit court use its inherent authority to vacate his conviction, the court exercised its discretion and declined to vacate the conviction, and Singh does not identify any persuasive reason that I should reverse that exercise of discretion. As mentioned below, I reject Singh's argument that the 2005 conviction is void for lack of subject matter jurisdiction.

will only apply retroactively to his case if it announced a "new rule of constitutional law" that is considered "substantive" within the meaning of this body of law.

Although these principles are easy enough to articulate, legal scholars and commentators have explained that they are much more difficult to apply. ***State v. Lo***, 2003 WI 107, ¶111, 264 Wis. 2d 1, 665 N.W.2d 756 (Abrahamson, C.J., dissenting) (rules on retroactivity has evolved into a "theoretically incoherent doctrine that has proven difficult to apply" (citations omitted)). Despite the complexities of the law in this area, Singh's argument in favor of retroactivity spans less than two pages of his opening appellate brief. In that portion of his brief, Singh relies primarily on a selected quotation from a single case, ***Montgomery***, 577 U.S. 190, and he makes conclusory assertions about its application here.

Singh contends that ***Forrett*** is a "new rule of constitutional law" because it declared unconstitutional certain aspects of Wisconsin's graduated penalty scheme for OWIs. Yet, not all cases that declare a statute unconstitutional constitute "a new rule" for purposes of a retroactivity analysis. Our supreme court has stated that a new constitutional holding constitutes a "new rule of constitutional law" if the result was "not dictated by precedent existing at the time" the defendant's conviction became final. *See* ***Lo***, 264 Wis. 2d 1, ¶62.

Singh does not address the legal standard defining what it means for a case to announce a "new rule of constitutional law," and I could reject Singh's argument on that basis alone. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (an appellate court need not address undeveloped arguments). But even if I overlook Singh's failure to develop an argument, the ***Forrett*** decision itself casts doubt on Singh's assertion that ***Forrett*** announces a new rule of constitutional law within the meaning of ***Lo***. As ***Forrett*** explains, its conclusion

about the constitutionality of WIS. STAT. §§ 343.307(1) and 346.65(2)(am) is founded on age-old constitutional principles, including the principle that "'a [s]tate may not impose a penalty upon those who exercise a right guaranteed by the Constitution,' such as the right to refuse a warrantless, unreasonable search." ***Forrett***, 401 Wis. 2d 678, ¶6 (alteration in original) (citing ***Harman v. Forssenius***, 380 U.S. 528, 540 (1975); ***Buckner v. State***, 56 Wis. 2d 539, 550, 202 N.W.2d 406 (1972)).

But even if ***Forrett*** did announce a "new rule of constitutional law," there are reasons to question Singh's assertion that the rule is "substantive." Our supreme court has stated that "the test for determining whether a new rule is substantive or procedural is whether the new rule affected the legality of the underlying conduct for which [the defendant] was convicted." ***Lagundoye***, 268 Wis. 2d 77, ¶24. Here, the underlying conduct for which Singh was convicted was operating a motor vehicle while under the influence of an intoxicant on July 20, 2003. That underlying conduct was not legal then, and it is not legal now.

Singh's argument on this point is conclusory at best. He cites ***Montgomery*** for the proposition that "[s]ubstantive rules … set forth categorical constitutional guarantees that place certain criminal laws and punishments altogether beyond the State's power to impose." ***Montgomery***, 577 U.S. at 201. Yet, nothing in ***Forrett*** constituted a "constitutional categorical guarantee" that Singh could not be criminally punished for driving while intoxicated on July 20, 2003. It is true that, had Singh's Illinois conviction not been counted for purposes of increasing the penalty for his unlawful conduct, Singh would have been charged with OWI first, which is considered a civil offense, rather than OWI second. However, nothing in ***Forrett*** leads to the conclusion that the State could not criminally punish the "primary conduct" of operating a vehicle while intoxicated, whether first or second offense, and nothing in ***Forrett*** prohibited the

state from imposing criminal penalties on first time OWI offenders. ***Montgomery***, 577 U.S. at 206 (defining substantive rules as those that forbid "criminal punishment of certain primary conduct" or prohibit "a certain category of punishment for a class of defendants because of their status or offense") (internal quotation marks and quoted source omitted). Under the circumstances, I am not persuaded by Singh's argument that ***Forrett*** sets forth a substantive rule such that it must be applied retroactively to a case that has been final for more than two decades.

Finally, even if ***Forrett*** did set forth a substantive new rule of constitutional law, it is far from clear that Singh is entitled to its retroactive application. In Wisconsin, a defendant who pleads guilty or no contest to a criminal charge waives the right to raise almost all claims of constitutional error on appeal. ***State v. Riekkoff***, 112 Wis. 2d 119, 122-23, 332 N.W.2d 744 (1983) (addressing the so-called "guilty-plea-waiver rule"); *see also* ***State v. Multaler***, 2002 WI 35, ¶54, 252 Wis. 2d 54, 643 N.W.2d 437 (a defendant who pleads guilty or no contest waives the right to raise almost all nonjurisdictional defects, including constitutional claims, on appeal). As mentioned, Singh pleaded no contest to the OWI charge in 2005, and he does not identify any authority that provides that the guilty plea waiver rule is inapplicable under these circumstances.

To be sure, the guilty-plea-waiver rule does not apply to jurisdictional defects, and Singh argues that the issue he is raising is a jurisdictional one. He is wrong. Singh cites ***State v. Bush***, 2005 WI 103, ¶18, 283 Wis. 2d 90, 699 N.W.2d 80, for the proposition that "a criminal complaint which fails to allege any offense known at law is jurisdictionally defective and void." That proposition has no application here because the criminal complaint charged Singh with OWI second, which is clearly an "offense known at law." *See* WIS. STAT. §§ 346.63(1), 346.65(2)(am)2; ***City of Eau Claire v. Booth***, 2016 WI 65, ¶16, 370 Wis. 2d 595, 882 N.W.2d

738. Likewise, if the complaint had charged Singh with OWI first instead of OWI second, that too would be an "offense known at law." ***Booth***, 370 Wis. 2d 595, ¶16.

In effect, Singh is arguing that he should not have pled no contest to OWI second because the State would not have been able to prove a prior offense that satisfied ***Forrett***'s constitutional analysis. That is an argument about the sufficiency of the evidence to prove Singh's guilt, and such arguments are subject to the guilty-plea-waiver rule. It is not an argument that undermines the subject matter jurisdiction of the circuit court. *See* ***Booth***, 370 Wis. 2d 595, ¶¶16-18.

To the extent that Singh raises other arguments that are not addressed here, I do not address them because the above analysis is dispositive. *See* ***Castillo***, 213 Wis. 2d at 492.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. § 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals