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November 10, 2020

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

2019AP2056

State of Wisconsin v. Derek Scott Headrick
(L. C. No. 2013CF524)

Before Stark, P.J., Hruz and Seidl, JJ.

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).

Derek Headrick, pro se, appeals from an order denying his WIS. STAT. § 974.06 (2017-18)¹ postconviction motion. Based upon our review of the briefs and records, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We reject Headrick's arguments and summarily affirm the order.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Headrick was charged with four counts of sexual assault of a child after he molested two girls, ages six and nine. He was held on \$1,000 cash bond. The State later dismissed one of the charges, and a jury found Headrick guilty of the remaining three counts. The circuit court imposed consecutive sentences totaling thirty-five years' initial incarceration and fifteen years' extended supervision.

Headrick's counsel filed a no-merit report, but Headrick subsequently asked that counsel voluntarily withdraw the no-merit report so that he could file an appeal or postconviction motion. At Headrick's request, we dismissed the no-merit appeal, relieved counsel from representing Headrick, and extended Headrick's time for filing a postconviction motion.

Headrick then filed a pro se motion under WIS. STAT. § 972.02, arguing that he was denied the effective assistance of trial counsel. The circuit court denied his motion without a hearing. Headrick filed a notice of appeal ten months later, and we dismissed his appeal as untimely.

Headrick subsequently filed the WIS. STAT. § 974.06 postconviction motion at issue here. He again alleged that his trial counsel was ineffective. Headrick also argued, for the first time, that the circuit court lost personal jurisdiction when it failed to hold his preliminary hearing within ten days of his initial appearance pursuant to WIS. STAT. § 970.03(2). The court found that each of Headrick's claims were procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). The court also held that even were it to reach the merits of his claims, the ultimate convictions resulted from a fair trial that cured any perceived errors

regarding the preliminary hearing. *See State v. Webb*, 160 Wis. 2d 622, 634-35, 467 N.W.2d 108 (1991). Headrick now appeals.²

On appeal, Headrick renews his claims that his trial counsel rendered ineffective assistance and that the circuit court lacked personal jurisdiction. We reject Headrick's arguments for three reasons.

First, although Headrick mentions his ineffective assistance of counsel claim in his brief-in-chief, he has effectively abandoned it, as he himself concedes. Headrick states that "it is not necessary for this court to address [the ineffective assistance] issue because the jurisdictional claim raised herein completely resolves this matter." Nor does he provide any citation to the appellate record showing that his counsel was deficient. As the State correctly notes, Headrick's claim is completely undeveloped. When a party fails to adequately argue an issue in its brief-in-chief, we may deem the issue abandoned, even though it was presented to the trial court. *See A.O. Smith Corp. v. Allstate Ins. Cos.*, 222 Wis. 2d 475, 493, 588 N.W.2d 285 (Ct. App. 1998).

Second, Headrick's remaining jurisdictional claim is procedurally barred under *Escalona-Naranjo* because he fails to allege a sufficient reason for not raising it in his prior motion. *See* WIS. STAT. § 974.06(4); *Escalona-Naranjo*, 185 Wis. 2d at 185. In order to overcome this procedural bar, a defendant must allege enough facts that, if true, would provide a sufficient reason for having previously failed to raise the present claim. *State v. Romero-Georgana*, 2014 WI 83, ¶35, 360 Wis. 2d 522, 849 N.W.2d 668. Headrick's current

² We granted Headrick's request for an extension to file a reply brief, but he failed to do so.

§ 974.06 motion fails to allege any reason, let alone a sufficient reason, why he could not have raised the jurisdictional argument in his previous WIS. STAT. § 974.02 motion.

In fact, Headrick concedes that his jurisdictional issue would ordinarily be procedurally barred because it was not raised in his prior appeal. He nevertheless argues that we must review the jurisdictional challenge he now raises because jurisdictional challenges can never be waived or forfeited.

Headrick is incorrect. WISCONSIN STAT. § 974.06(4) requires that *all* grounds for relief available under that section be raised in a defendant's first postconviction motion, including jurisdictional claims. There is no "jurisdictional" exception to the requirement that all grounds for postconviction relief must be raised together, absent a sufficient reason for failing to do so. *Escalona-Naranjo* itself held that § 974.06(4) does not preclude a defendant from subsequently raising "an issue of constitutional dimension," as long as the defendant alleges a "sufficient reason" for failing to raise it previously. See *Escalona-Naranjo*, 185 Wis.2d at 183-84. Accordingly, Headrick's jurisdictional claim is barred.

Finally, even if Headrick's jurisdictional claim were not procedurally barred, it would nonetheless fail on the merits because the circuit court correctly concluded that Headrick's preliminary hearing was held in a timely manner, and the conviction cured any perceived jurisdictional defects resulting from a delayed preliminary hearing.³

³ Headrick also fails to develop an argument on his jurisdictional claim. He merely asserts that his preliminary hearing was not held within ten days of his initial appearance without analyzing the dates at issue or the law regarding counting the days between his initial appearance and his preliminary hearing. Nonetheless, had he done so, he would have reached the inevitable conclusion that his preliminary hearing was timely.

Wisconsin law requires that a preliminary hearing be held within ten days of a defendant's initial appearance if he or she is in custody and bail has been fixed in excess of \$500. WIS. STAT. § 970.03(2). "When the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays and holidays shall be excluded in the computation." WIS. STAT. § 801.15(1)(b). Further, "the day of the act, event or default from which the designated period of time begins to run shall not be included." *Id.* The time limit at issue here is ten days. Thus, § 970.03(2) applies and excludes Saturdays, Sundays and holidays from the computation.

Headrick's initial appearance occurred on Thursday, December 26, 2013. The circuit court initially scheduled his preliminary hearing for Wednesday, January 8, 2014, and it was later rescheduled for Friday, January 10, 2014. Thursday, December 26, is not counted because it is the "day of the ... event ... from which the designated period of time begins to run[.]" *See* WIS. STAT. § 801.15(1)(b). Thus, the computation begins on Friday, December 27, 2013. Excluding weekends, New Year's Eve, and New Year's Day, the following days count toward the ten-day time limit: (1) Friday, December 27, 2013; (2) Monday, December 30, 2013; (3) Thursday, January 2, 2014; (4) Friday, January 3, 2014; (5) Monday, January 6, 2014; (6) Tuesday, January 7, 2014; (7) Wednesday, January 8, 2014; (8) Thursday, January 9, 2014; and (9) Friday, January 10, 2014. *See* WIS. STAT. §§ 230.35(4)(a)1., 801.15(1)(a), (b), 995.20 (listing New Year's Eve and New Year's Day as holidays). Headrick's preliminary hearing was held on Friday, January 10, 2014, the ninth permissible day of the ten-day limitation.

We also note Headrick fails to address the circuit court's analysis regarding *Webb*, or its holding that "the ultimate conviction resulting from a fair trial cures any preliminary hearing errors." By failing to address the court's reliance on *Webb*, Headrick cannot now complain that

it was incorrect. See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals