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DISTRICT II

November 16, 2022

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Washington County Courthouse
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Daniel J.H. Bartelt, #621440
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P.O. Box 351
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You are hereby notified that the Court has entered the following opinion and order:

2021AP258 State of Wisconsin v. Daniel J.H. Bartelt (L.C. #2013CF276)

Before Neubauer, Grogan and Lazar, 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).

Daniel J.H. Bartelt appeals from an order denying his motion for postconviction relief under WIS. STAT. § 974.06 (2019-20).[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Bartelt's claims are precluded by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), because he fails to provide a sufficient reason for not raising these arguments during his direct appeal. Thus, we affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Police initially interviewed Bartelt on July 16, 2013, with respect to a knife attack on a woman while she was walking her dog in a Richfield park on the morning of July 12, 2013. During this initial interview, Bartelt brought up Jessie Blodgett, a nineteen-year-old woman who had been found strangled to death in her home in Hartford the day before, on July 15, 2013. Bartelt eventually confessed to the knife attack in the park.

The next day, different detectives interviewed Bartelt about Blodgett. After waiving his ***Miranda***[2] rights, Bartelt said that he had dated Blodgett for a few months while they were freshmen in high school and that they had been spending time together again recently. He denied being at Blodgett's house the day that she died, claiming he had been driving around that day and then ended up at a park in Hartford. Questioning stopped after Bartelt asked for an attorney.

Police found evidence connecting Bartelt to Blodgett's murder in a trash can at the park in Hartford, including ropes matching the ligature marks on Blodgett's body that contained DNA from both Bartelt and Blodgett, antiseptic wipes with red stains, tape, and paper toweling. The State ultimately charged Bartelt with attempted first-degree intentional homicide for the knife attack and with first-degree intentional homicide for Blodgett's murder, among other lesser charges. The trial court[3] granted Bartelt's motion to sever these charges so the charge related to Blodgett would be tried independent of the charges related to the knife attack—and the jury would not hear evidence of Bartelt's role in the knife attack unless Bartelt posited a defense in

[2] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[3] The Honorable Todd K. Martens.

the Blodgett case that "he did know what happened, but it wasn't an intentional act, it was an accident … then evidence of [the knife attack] would undoubtedly be admissible … because it would demonstrate an intent to kill."

Before trial, Bartelt moved to suppress his statements to police (and evidence derived therefrom) in both the July 16 and July 17 interviews on ***Miranda*** grounds. He argued that at least as of the point in time "when he first made any sort of inculpatory statement with regard to the July 12th [knife attack] incident" in the first interview, he was no longer free to go and thus was in custody and "should have been Mirandized." He further argued that the second interview, which focused on Blodgett, "should never have taken place without counsel" under ***Edwards v. Arizona***[4] because Bartelt had requested an attorney the day before and had never revoked that request. The trial court denied Bartelt's motion, concluding that Bartelt was not in custody when he requested counsel during the initial interview and, therefore, finding no ***Miranda*** or ***Edwards*** violation.

A jury convicted Bartelt of first-degree intentional homicide for Blodgett's murder, and the trial court sentenced Bartelt to life in prison without the possibility of extended supervision. Bartelt then entered a plea agreement on the knife attack charge, resulting in an additional sentence to be served consecutive to all other sentences.

Bartelt's appointed postconviction counsel filed an appeal challenging the trial court's denial of Bartelt's motion to suppress. This court affirmed the trial court's ruling, agreeing that no ***Miranda*** or ***Edwards*** violation occurred. ***State v. Bartelt***, 2017 WI App 23, 375 Wis. 2d 148,

[4] 451 U.S. 477 (1981).

895 N.W.2d 86. In a split decision, the Wisconsin Supreme Court upheld the conviction in February 2018. ***State v. Bartelt***, 2018 WI 16, 379 Wis. 2d 588, 906 N.W.2d 684.

In January 2020, more than five years after his conviction, Bartelt filed a pro se motion under WIS. STAT. § 974.06.[5] He raised eight grounds for relief.[6] The trial court denied Bartelt's motion, determining that Bartelt's claims were procedurally barred because Bartelt failed to show why he did not raise the issues during his direct appeal. Bartelt asserts that the trial court erred and that his counsel's ineffective assistance for failing to file a postconviction motion provides a sufficient reason to avoid the ***Escalona-Naranjo*** procedural bar. We disagree.

WISCONSIN STAT. § 974.06(1) provides an avenue for prisoners to collaterally attack their sentences based on constitutional violations. Any grounds for relief under this section, however, are barred under § 974.06(4) if they were not raised in the prisoner's original postconviction motion "or in any other proceeding the person has taken to secure relief … unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately

[5] Bartelt also filed a separate "Constitutional Challenge" to WIS. STAT. § 974.06, arguing that the statute is unconstitutional as applied to him. Bartelt renews that challenge here as one of the eight grounds in his § 974.06 motion. Like the trial court, we conclude that this motion is procedurally barred. Thus, we do not reach the merits of this specific challenge.

[6] Bartelt maintains his arguments with respect to six of those eight grounds in his briefing to this court. Of these remaining six grounds, he acknowledges the trial court correctly dismissed two: (1) the ***Miranda*** and ***Edwards*** issue that was already resolved against him in his direct appeal; and (2) a challenge to the definition of reasonable doubt presented in the jury instructions at trial (held to be constitutional in ***State v. Trammell***, 2019 WI 59, 387 Wis. 2d 156, 928 N.W.2d 564). Two more grounds stem from alleged constitutional violations at trial: (1) ineffective assistance of trial counsel (for failing to inform Bartelt that a defense of accident was a legal possibility); and (2) a due process violation in the trial court's failure to dismiss two jurors for cause. For the final two grounds, Bartelt asserts that postconviction counsel was ineffective for failing to file a postconviction motion pursuant to WIS. STAT. § 974.02 and that WIS. STAT. § 974.06 is unconstitutional as applied to him because it raises the bar on inequitable conduct to a higher standard than that in ***Strickland v. Washington***, 466 U.S. 668 (1984).

raised" in those earlier proceedings. In ***Escalona-Naranjo***, our supreme court explained that "the purpose of [§] 974.06(4) is … to require criminal defendants to consolidate all their postconviction claims into *one* motion or appeal." 185 Wis. 2d at 178. The procedural bar excludes all issues that were or could have been raised in a § 974.02 motion or direct appeal unless the defendant provides "sufficient reason" for not raising the issues in that earlier proceeding. *See* ***Escalona-Naranjo***, 185 Wis. 2d at 173, 185 ("constitutional claims which could have been raised on direct appeal or in a sec. 974.02 motion cannot later be the basis for a sec. 974.06 motion"). Whether a claim under § 974.06 is procedurally barred is a question of law that we review de novo. ***State v. Allen***, 2010 WI 89, ¶15, 328 Wis. 2d 1, 786 N.W.2d 124.

Our supreme court has acknowledged that "[i]n some instances, ineffective assistance of postconviction counsel may be a sufficient reason for failing to raise an available claim in an earlier motion or on direct appeal." ***State v. Romero-Georgana***, 2014 WI 83, ¶36, 360 Wis. 2d 522, 849 N.W.2d 668; ***State v. Balliette***, 2011 WI 79, ¶37, 336 Wis. 2d 358, 805 N.W.2d 334. To prove ineffective assistance of counsel in this context, Bartelt must: "show that a particular nonfrivolous issue was *clearly stronger* than issues that counsel did present." *See* ***Romero-Georgana***, 360 Wis. 2d 522, ¶45 (citation omitted); *see also* ***Gray v. Greer***, 800 F.2d 644, 646 (7th Cir. 1986) ("Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome."). Conclusory allegations that an issue should have been raised are not enough; a defendant must "make the case" and establish that there was ineffective assistance of counsel in the WIS. STAT. § 974.06 motion in order to overcome the procedural bar. ***Balliette***, 336 Wis. 2d 358, ¶67.

We reject Bartelt's contention that this "clearly stronger" standard does not apply to him because his postconviction counsel did not pursue a claim for ineffective assistance of trial

counsel in the trial court. All of the claims Bartelt raised in his WIS. STAT. § 974.06 motion either were raised, or could have been raised, in his direct appeal or in a § 974.02 motion. Thus, Bartelt's claims are barred absent a showing that they are clearly stronger than the ***Miranda*** or ***Edwards*** issue that his counsel pursued on appeal. *See* ***Romero-Georgana***, 360 Wis. 2d 522, ¶45.

Bartelt's WIS. STAT. § 974.06 motion did not even allege that the claims he wishes to bring now are stronger than the ones brought in his direct appeal. In fact, Bartelt himself characterizes the question of whether police violated his rights under ***Miranda*** or ***Edwards*** (raised on direct appeal) as "strong," and he continues to press that issue in his § 974.06 motion so as to preserve it for federal habeas review. Nor did Bartelt's motion provide any specifics of his postconviction counsel's conduct that allegedly made it ineffective; it contains only a conclusory allegation that the failure to file a postconviction motion in and of itself constituted ineffective assistance. "We will not assume ineffective assistance from a conclusory assertion." ***Romero-Georgana***, 360 Wis. 2d 522, ¶62. The trial court was correct in its finding that this case "fall[s] squarely under the holding of ***Escalona-Naranjo***." Bartelt's argument, thus, fails.

Bartelt's final argument on appeal is that this court should reverse his conviction in the interest of justice pursuant to WIS. STAT. § 752.35 because the real controversy below, "whether Bartelt intentionally killed" Blodgett or whether her death was the result of an accident, was not fully tried. This court may exercise its power of discretionary reversal under § 752.35 when, among other things, an error of counsel leads to a conclusion that "the real controversy has not been fully tried." ***Vollmer v. Luety***, 156 Wis. 2d 1, 19-20, 456 N.W.2d 797 (1990). This is a formidable statutory power and we exercise it "infrequently and judiciously." ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60 (citation omitted).

We reject Bartelt's claim. As explained above, Bartelt has failed to establish that this claim is clearly stronger than the claims brought in his direct appeal, and more to the point, he has failed to show how his postconviction counsel was ineffective in failing to pursue the defense of accident. Bartelt has failed to establish that the issue of intent was not fully tried. We decline to exercise our discretion to reverse in this case.

Based on the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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