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DISTRICT III

May 16, 2023

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

2020AP911

State of Wisconsin v. Cesar Flores-Ramirez
(L. C. No. 2002CF880)

Before Stark, P.J., Hruz and Gill, 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).

Cesar Flores-Ramirez, pro se, appeals an order denying his petition for a writ of habeas corpus. Flores-Ramirez argues that the circuit court violated his constitutional rights in 2003 by amending his judgment of conviction without a hearing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. We

reject Flores-Ramirez’s arguments and summarily affirm the order. *See* WIS. STAT. RULE 809.21 (2021-22).¹

The State charged Flores-Ramirez with first-degree intentional homicide, as a party to a crime, contrary to WIS. STAT. § 940.01(1)(a). The charge arose from allegations that Flores-Ramirez and a co-defendant beat a man to death with a baseball bat on October 7, 2002. A jury found Flores-Ramirez guilty of the crime charged, which is a Class A felony requiring a life sentence under WIS. STAT. § 973.014(1g). At sentencing, the prosecutor noted that the circuit court had to address a “relatively narrow” issue under § 973.014—specifically, the issue of Flores-Ramirez’s eligibility for release to extended supervision. The prosecutor explained that the court had three options: (1) set Flores-Ramirez’s eligibility for release to extended supervision once he served twenty years; (2) set Flores-Ramirez’s eligibility to occur on a date after Flores-Ramirez had served more than twenty years; or (3) deem Flores-Ramirez ineligible for release to extended supervision. *See* § 973.014(1g)(a).

The State and the presentence investigation report (“PSI”) author recommended eligibility for release to extended supervision after Flores-Ramirez served forty to fifty years in prison, while defense counsel recommended eligibility for release to extended supervision at the statutory minimum of twenty years. After considering proper sentencing factors, the circuit court stated: “You took a person’s life and you took it for the shallowest of reasons,” adding that “[t]o not imprison you for an extended period of time in my mind would depreciate the seriousness of this offense[.]” Consistent with the recommendation made by the State and the

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

PSI author, the court sentenced Flores-Ramirez to life, with the “date [he] would be eligible for extended supervision” at forty-five years, which it calculated (before sentence credit) to be May 30, 2048.

The original judgment of conviction reflected that Flores-Ramirez was sentenced to state prison for forty-five years, not life, and it did not expressly designate Flores-Ramirez’s extended supervision eligibility. When the Department of Corrections (“DOC”) alerted the circuit court to the error, the court issued an amended judgment of conviction reflecting a bifurcated sentence of forty-five years’ initial confinement followed by extended supervision for the remainder of Flores-Ramirez’s life. The DOC then notified the court that the amended judgment of conviction remained flawed because it reflected a bifurcated sentence, rather than a life sentence with the date for extended supervision eligibility, if any, designated. On September 9, 2003, the court entered a second amended judgment of conviction to reflect that Flores-Ramirez was sentenced to life with eligibility for release to extended supervision in forty-five years.

Flores-Ramirez filed a direct appeal claiming that the evidence at trial was insufficient to support his conviction. This court rejected his arguments and affirmed the judgment. *See State v. Flores-Ramirez*, No. 2003AP3479-CR, unpublished slip op. (WI App Nov. 2, 2004). In 2012, Flores-Ramirez unsuccessfully pursued a WIS. STAT. § 974.06 motion, asserting that his counsel was ineffective by failing to challenge the adequacy of the Spanish translation services provided at his 2003 trial. On appeal, this court summarily affirmed the order denying his § 974.06 motion. *See State v. Flores-Ramirez*, No. 2012AP723, unpublished op. and order (WI App Sept. 13, 2013).

In 2020, Flores-Ramirez filed the underlying petition for a writ of habeas corpus, asserting that his sentence was illegal and that the amendments to his judgment of conviction constituted a new sentence that violated his constitutional rights to equal protection and due process. The circuit court denied the petition, and this appeal follows.

As an initial matter, we note that although Flores-Ramirez's pleading was identified and addressed as a habeas petition, it could have been construed as a second WIS. STAT. § 974.06 motion because it was captioned as a challenge to the underlying criminal case and it alleged constitutional claims. Regardless of how the pleading is construed, it fails, both because Flores-Ramirez did not meet the criteria for granting a writ of habeas corpus and because his arguments are procedurally barred.

A petitioner seeking a writ of habeas corpus must: (1) be restrained of his or her liberty; (2) establish that a tribunal imposed the restraint in violation of the petitioner's constitutional protections or without jurisdiction; and (3) show that he or she has no other adequate remedy at law. *State ex rel. Fuentes v. Court of Appeals*, 225 Wis. 2d 446, 451, 593 N.W.2d 48 (1999). Flores-Ramirez had an adequate remedy available when he challenged his conviction on direct appeal and in his first WIS. STAT. § 974.06 motion, and he does not offer a sufficient reason for failing to raise his present arguments earlier. See *State v. Pozo*, 2002 WI App 279, ¶10, 258 Wis. 2d 796, 654 N.W.2d 12 (denying availability of habeas where petitioner "has not provided a valid reason to excuse" petitioner's failure to assert his or her claims on direct appeal). If the underlying pleading had been construed as a § 974.06 motion, Flores-Ramirez likewise fails to show a sufficient reason for not raising his present arguments on direct appeal or in his first § 974.06 motion. See *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 184, 517 N.W.2d 157 (1994).

Even on the merits of his petition, Flores-Ramirez’s arguments fail. “A circuit court’s order denying a petition for writ of habeas corpus presents a mixed question of fact and law.” *Pozo*, 258 Wis. 2d 796, ¶6. “Factual determinations will not be reversed unless clearly erroneous,” but whether “a writ of habeas corpus is available to the party seeking relief is a question of law that is reviewed de novo.” *Id.*

As best we can tell, Flores-Ramirez’s arguments are two-fold. First, he appears to argue that the circuit court violated his equal protection or due process rights because it amended the judgment of conviction without giving Flores-Ramirez an opportunity to be heard on the matter. WISCONSIN STAT. § 971.04(1)(g) provides that a defendant is to be present at “pronouncement of judgment and the imposition of sentence.” As noted above, however, the original and first amended judgments of conviction, which designated his initial confinement as a period of years rather than life, did not accurately reflect the sentence imposed. The second amended judgment of conviction corrected the sentence “to reflect the circuit court’s unambiguous oral pronouncement of sentence at which the defendant was present.” *State v. Prihoda*, 2000 WI 123, ¶29, 239 Wis. 2d 244, 618 N.W.2d 857. “The statute does not mandate a defendant’s presence when a clerical error is corrected.” *Id.*

Second, Flores-Ramirez appears to argue that he had a “procedural right” under WIS. STAT. § 973.014(1)(a)-(c) and (2) to petition the circuit court for release after he served twenty years of his life sentence. The second amended judgment, however, accurately reflects the court’s oral pronouncement at sentencing. The court clearly sentenced Flores-Ramirez to life with his first opportunity for extended supervision after forty-five years. Flores-Ramirez nevertheless intimates that the court’s failure to set a specific date for extended supervision eligibility under § 973.014(1g)(a)2., requires his extended supervision eligibility to be commuted

to the statutory minimum of twenty years under § 973.014(1g)(a)1. We are not persuaded. The court's determination that Flores-Ramirez was eligible for parole after forty-five years complies with § 973.014(1g)(a)2. because setting a term of years is a method of setting a date—especially where, as here, the specific parole eligibility date was readily ascertainable from the record.

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