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DISTRICT IV

February 15, 2024

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
5685 W. Upham Ave.
Greenfield, WI 53220

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

2023AP509 State of Wisconsin v. Aman D. Singh (L.C. # 2004CT882)

Before Nashold, 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, pro se, appeals a circuit court order denying his motion to vacate a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant (OWI), second offense. He argues that his conviction is "void" under WIS. STAT. § 806.07(1)(d), and, in the alternative, that his conviction should be reversed pursuant to article I, section 9 of the Wisconsin Constitution and this court's discretionary authority. I conclude that this case is

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version.

appropriate for summary disposition, *see* WIS. STAT. RULE 809.21(1), and affirm the circuit court order.

In 2004, Singh was convicted, following a plea of no contest, of second-offense OWI. He was sentenced to ten days in jail, his license was revoked for fifteen months, and he was awarded sentence credit for the period of time previously served. ***State v. Singh***, 2015AP850-CR, unpublished slip op. ¶2 (WI App Jan. 7, 2016). This is Singh's fifth appeal seeking to overturn his now-20-year-old conviction. *See* ***State v. Singh***, 2015AP850-CR, unpublished slip op. (WI App Jan. 7, 2016) (***Singh I***); ***State v. Singh***, 2017AP1609, unpublished slip op. (WI App July 26, 2018) (***Singh II***); ***State v. Singh***, 2018AP2412-CR, unpublished slip op. (WI App Apr. 16, 2020) (***Singh III***); ***State v. Singh***, 2021AP1111-CR, unpublished slip op. (WI App Aug. 18, 2022) (***Singh IV***).

In his current appeal, Singh advances three arguments, all of which are based on the premise that he could not be charged with second-offense OWI under ***State v. Forrett***, 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422, and that ***Forrett*** applies retroactively to his conviction. In ***Forrett***, our supreme court held that Wisconsin's "OWI statutes are facially unconstitutional to the extent 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. According to Singh, his 2001 refusal in Illinois was improperly

counted as a prior offense under ***Forrett*** because it was a refusal to submit to a warrantless blood test.[2] For the reasons set forth below, I reject Singh's arguments.

Singh first argues that his conviction for second-offense OWI is "void" under WIS. STAT. § 806.07(1)(d). Specifically, he contends that the circuit court did not have subject matter jurisdiction over his second-offense OWI because, under ***Forrett***, his refusal could not be counted as a prior offense. Pertinent here, § 806.07(1)(d) provides that "[o]n motion and upon such terms as are just," the court may relieve a party from a judgment where "[t]he judgment is void."

However, Singh fails to cite any authority or develop an argument that WIS. STAT. § 806.07 may be used as a vehicle to challenge a criminal conviction. Notably, § 806.07 is found in the chapter of the Wisconsin statutes titled, "CIVIL PROCEDURE – JUDGMENT." Singh

[2] Notwithstanding Singh's assertions to the contrary, the record does not establish that his Illinois refusal was of a blood test versus a breath or urine test, the latter of which are not implicated by ***State v. Forrett***, 2022 WI 37, 401 Wis. 2d 678, 974 N.W.2d 422. In support of his assertion that his prior offense in Illinois involved refusal of a blood test, Singh cites a transcript of a circuit court hearing at which he testified, "[M]y recollection of that incident has always been that I was asked to take a blood test and that is what I refused." Although the criminal complaint alleged a refusal in Illinois as the prior offense, and documentation to that effect was presented to the court, no documentation was presented as to what type of test was refused. Moreover, the court did not make any finding that Singh refused a blood test, nor did it make any credibility determinations regarding Singh's testimony. Instead, the court "assume[d] without deciding" that Singh refused a blood test and ruled against Singh on other grounds. Thus, even if this court were to conclude that Singh is correct that ***Forrett*** applies retroactively, this case would need to be remanded for fact-finding on whether his prior offense involved refusal of a blood test, a factual determination which this court may not make on appeal.

Separately, I note that in his last appeal in this case, Singh also challenged his conviction based in part on ***Forrett***. *See* ***State v. Singh (Singh IV)***, 2021AP1111-CR, unpublished slip op. ¶¶10, 12 (WI App Aug. 18, 2022). In ***Singh IV***, rather than relying on WIS. STAT. § 806.07(1)(d) as he does here, Singh's challenge was brought pursuant to WIS. STAT. § 973.13 and a writ of *coram nobis*, which this court concluded could not be used to challenge Singh's conviction. *See* ***Singh IV***, 2021AP1111-CR, ¶¶10, 12. Because I reject Singh's arguments on other grounds, I need not address whether Singh is procedurally barred from again raising a ***Forrett***-based challenge but through a different statutory mechanism.

does not explain why this civil procedure provision would apply to his criminal conviction, nor does he discuss, much less distinguish, case law indicating that § 806.07 is inapplicable in criminal proceedings.

For example, in ***State v. Henley***, 2010 WI 97, ¶¶69-71, 328 Wis. 2d 544, 787 N.W.2d 350, our supreme court rejected the use of WIS. STAT. § 806.07(1) as a mechanism to challenge a defendant's criminal conviction. The court explained that WIS. STAT. §§ "974.02 and 974.06 were written to provide the primary statutory means of postconviction, appeal, and post-appeal relief for convicted criminal defendants," and that if criminal defendants could use a "civil procedure statute ... to challenge their conviction," they would not "ever use §§ 974.02 and 974.06."[3] ***Henley***, 328 Wis. 2d 544, ¶70; *see also* ***State ex rel. Lewandowski v. Callaway***, 118 Wis. 2d 165, 172, 346 N.W.2d 457 (1984) ("Section 806.07(1), Stats., *which governs civil actions*, grants to courts the power to '... relieve a party or legal representative from a judgment, order or stipulation ...' upon a motion for relief and upon a showing that one of the reasons for relief specified in the statute is satisfied." (alterations in original; emphasis added; quoting § 806.071(1))). In light of this authority and Singh's failure to provide any authority or developed argument to the contrary, Singh's challenge based on § 806.07(1) fails. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

[3] Although ***State v. Henley***, 2010 WI 97, ¶¶69-71, 328 Wis. 2d 544, 787 N.W.2d 350, involved WIS. STAT. § 806.07(1)(g) and (h) rather than § 806.07(1)(d) upon which Singh relies, Singh provides no rationale to distinguish ***Henley*** on that basis, nor do I discern any.

Notably, the ***Henley*** court likewise concluded that "[WIS. STAT.] § 805.15(1) is not a proper vehicle for a criminal defendant to seek a new trial in the interest of justice" "for many of the same reasons" that the provisions of WIS. STAT. § 806.07(1) are unavailable. ***Henley***, 328 Wis. 2d 544, ¶¶66, 70. These reasons include that § 805.15(1) is a civil statute and inapplicable to criminal cases, ***id.***, ¶39, and that "[a]llowing motions in the interest of justice under § 805.15(1) at any time renders limitations under [WIS. STAT.] § 974.02 and [WIS. STAT.] § 974.06 irrelevant." ***Id.***, ¶55.

Second, Singh argues in the alternative that he was deprived of a remedy and that "the circuit court should have crafted a remedy for the ***Forrett*** violation" under article I, section 9 of the Wisconsin Constitution, which provides that "[e]very person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character." Singh cites ***Collins v. Eli Lilly Co.***, 116 Wis. 2d 166, 342 N.W.2d 37 (1984), in which our supreme court interpreted this provision to mean that "'[w]hen an adequate remedy or forum does not exist to resolve disputes or provide due process, the courts, under the Wisconsin Constitution, can fashion an adequate remedy.'" ***Collins***, 116 Wis. 2d at 182 (quoted source omitted). Singh argues that he lacked an adequate remedy because: (1) ***Forrett*** had not been decided at the time of his conviction or during his earlier challenges to his conviction, and (2) this court determined in ***Singh IV*** that neither WIS. STAT. § 973.13 nor a writ of *coram nobis* permitted Singh to seek relief based on ***Forrett***. ***Singh IV***, 2021AP1111-CR, ¶¶10, 12.

These grounds are insufficient to establish that Singh was deprived of an adequate remedy under article I, section 9 of the Wisconsin Constitution. That ***Forrett*** had not yet been decided does not mean that Singh could not have challenged his Illinois refusal on the same ground that the defendant relied on in ***Forrett***. Indeed, when the defendant in ***Forrett*** raised such a challenge, there was likewise no controlling Wisconsin authority on this specific point because ***Forrett*** had obviously not been decided.[4] Under Singh's interpretation, article I, section 9 would allow cases that were resolved long ago to be reopened without limitation, whenever new,

[4] Moreover, although he waited over a decade to do so, Singh has in fact previously argued that his Illinois refusal could not serve as a predicate offense in charging him with second-offense OWI because the refusal involved a blood test. *See* ***State v. Singh***, 2018AP2412-CR, unpublished slip op. (WI App Apr. 16, 2020); ***Singh IV***, 2021AP1111-CR.

relevant case law emerges. Singh provides no authority to support such a view. Nor does he support his position that this court's rejection of his legal arguments in ***Singh IV*** deprived him of a remedy under article I, section 9.

Finally, I reject Singh's request that this court exercise its discretionary reversal authority under WIS. STAT. § 752.35, which, as Singh acknowledges, is "exercised only in 'exceptional cases.'" ***State v. Avery***, 2013 WI 13, ¶38, 345 Wis. 2d 407, 826 N.W.2d 60 (quoted source omitted). Singh argues that ***Forrett*** should be applied retroactively to reverse his conviction from 20 years ago. He offers no support from the ***Forrett*** opinion itself for such an outcome, nor does he provide authority from this or any other jurisdiction in which a court has applied the conclusion from ***Forrett*** retroactively to reverse a decades-old conviction entered pursuant to a plea. Singh has failed to show that this is an exceptional case that warrants discretionary reversal.

Accordingly,

IT IS ORDERED that the circuit court order denying Singh's motion to vacate his judgment of conviction is summarily affirmed.

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

Samuel A. Christensen
Clerk of Court of Appeals