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DISTRICT I

September 10, 2024

To:

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Circuit Court Judge
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Clerk of Circuit Court
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John D. Flynn
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You are hereby notified that the Court has entered the following opinion and order:

2023AP339-CR

State of Wisconsin v. Elijah Matthew Campbell
(L.C. # 2018CF3940)

Before White, C.J., Donald, P.J., and Geenen, J.

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).

Elijah Matthew Campbell appeals his judgment of conviction entered after he pled guilty to conspiracy to commit theft and misappropriating identification information as a party to a crime, and no contest to fleeing an officer. He also appeals an order denying his postconviction motion in which he asserted a speedy trial violation and claimed ineffective assistance of counsel, alleging that his trial counsel had misinformed him about the amount of sentence credit he was due. 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 (2021-22).¹ We summarily affirm.

The charges against Campbell stemmed from a “multi-county, multi-state crime spree” that occurred between December 2014 and August 2015. This crime spree involved stealing vehicles from dealerships in Wisconsin and Illinois, stealing license plates to affix to the stolen vehicles, and driving off from gas stations without paying after pumping fuel for those vehicles; stealing construction and landscaping equipment from stores and job sites, and then selling the items to pawn shops using stolen identities; and leading different law enforcement agencies on several high-speed pursuits.

Campbell was charged on August 20, 2018, with eight counts, including three counts of theft exceeding \$10,000, as a party to a crime; two counts of misappropriating identification information, as a party to a crime; two counts of fleeing an officer; and one count of second-degree recklessly endangering safety.² He made a speedy trial demand at his initial appearance on August 23, 2018. He was released on bail in September 2018; he then subsequently failed to appear at two scheduling conferences in February 2019. A bench warrant was issued by the circuit court, and the Department of Corrections (DOC) also issued a warrant for Campbell for absconding from his extended supervision in another case.

Campbell was returned on the warrants in October 2019. New counsel then had to be assigned.

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

² The State subsequently added one count of conspiracy to commit theft with a value exceeding \$10,000, as reflected in the information filed in June 2021.

After delays relating to the assignment of new counsel, a plea hearing was eventually set for March 27, 2020. However, due to the COVID-19 pandemic, the hearing was rescheduled for June. The parties then jointly requested several adjournments for further negotiations. Subsequently, at a hearing on December 21, 2020, counsel for Campbell indicated that he instead wanted a speedy trial date. The circuit court found good cause for delaying a speedy trial, however, due to Campbell having a hold issued by the DOC for violating probation, and warrants from several other counties as well as Illinois. The court also cited calendar backlogs as a result of the pandemic.

Campbell filed a pretrial motion in January 2021 seeking dismissal of the charges based on a speedy trial violation.³ The State responded that Campbell was responsible for a significant portion of the delays, and included a chart depicting the reasons for the delays, the number of days associated with each delay, and the party accountable for each delay.

A hearing was held on the motion in March 2021. The circuit court performed an analysis according to the factors set forth in *Barker v. Wingo*, 407 U.S. 514 (1972), which include (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. *Id.* at 530-532.

³ Campbell asserted the constitutional right to a speedy trial, as opposed to the statutory right set forth at WIS. STAT. § 971.10. For a constitutional speedy trial demand, there is no “fixed point” time frame for a violation, and the remedy is the “severe” consequence of dismissal of the charges. *Barker v. Wingo*, 407 U.S. 514, 521-22 (1972). In contrast, under § 971.10, if a defendant is charged with a felony, makes a speedy trial demand, and is not tried within ninety days, the remedy is for him or her to be released from custody. Sec. 971.10(4). Campbell never asserted a violation of § 971.10 in either his pretrial or postconviction motions, or on appeal; however, in both his postconviction motion and appellate briefs, he asserts there was a mandatory time frame for his trial, appearing to conflate the standards. Nevertheless, we review only Campbell's constitutional right to a speedy trial, as that is the claim before us.

The circuit court reviewed the entire time frame of the case. It found that Campbell's speedy trial right was first asserted on August 23, 2018, when he made the demand at his initial appearance. However, the court stated that because he was released on bail in September 2018, the demand "really dissipated because he was no longer in custody," and that "even if it didn't dissipate[,] he absconded." The court observed that when Campbell absconded, his speedy trial demand was "broken up by his own failures."

The circuit court found that Campbell had reasserted his speedy trial demand on December 21, 2020. The court then discussed in detail the various delays that occurred throughout the case and allocated responsibility for those delays, finding that Campbell was responsible for "a significant portion" of them. The court further found that Campbell had not demonstrated that he suffered prejudice from the delays. Therefore, after weighing the *Barker* factors, and noting that this case was a "substantial" matter with a "complex set of circumstances," the court denied Campbell's motion.⁴

Campbell then opted to resolve this matter with a plea. In September 2021, he pled guilty to conspiracy to commit theft and misappropriating identification information as a party to a

⁴ In his pretrial motion, Campbell cited to *United States v. Lovasco*, 431 U.S. 783 (1977), where the issue was whether a pre-indictment delay was a due process violation requiring the charges to be dismissed. *Id.* at 784. Here, there was approximately a three-year gap between Campbell's commission of the offenses and the filing of the criminal complaint. However, other than citing to *Lovasco*, Campbell did not present an argument in his pretrial motion relating to a due process violation for a charging delay. Nevertheless, in the interest of a complete record, the State addressed the issue in its response, and the circuit court made findings relating to that analysis at the motion hearing.

In his postconviction motion and appellate briefs Campbell again cites to *Lovasco*, but presents no due process argument relating to a charging delay. We therefore do not address this issue. *See State v. Ledger*, 175 Wis. 2d 116, 135, 499 N.W.2d 198 (Ct. App. 1993) (discussing that issues raised but not briefed or argued on appeal are deemed abandoned); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining that we will not develop arguments for parties).

crime, and no contest to fleeing an officer. The circuit court imposed a global sentence of four years of initial confinement to be followed by five years of extended supervision, with 338 days of sentence credit.

Campbell filed a postconviction motion renewing his claim of a speedy trial violation. He also alleged ineffective assistance of counsel, asserting that his trial counsel had advised him that he would receive over 800 days of sentence credit, and stating that he may not have entered his pleas had he known the true amount of sentence credit to which he was entitled.

With regard to the speedy trial violation, the circuit court reviewed its decision from the March 2021 hearing and concluded that it properly considered the *Barker* factors. It stated that nothing in Campbell's motion persuaded it to reconsider its ruling from that hearing. The court further noted that the State had argued that Campbell's claim was barred by the guilty plea waiver rule and that Campbell had not responded to that argument, thereby conceding it.

With regard to Campbell's ineffective assistance claim, the circuit court found that the claim was not sufficiently pled. Specifically, the court found that Campbell "failed to set forth objective facts explaining why he would have rejected the plea offer and gone to trial if he had understood the 'true amount of sentencing credit that he was due,'" and that Campbell's allegations of prejudice were conclusory. The court therefore denied Campbell's postconviction motion without an evidentiary hearing. This appeal follows.

On appeal, Campbell maintains his claim that his right to a speedy trial was violated.⁵ The State again asserts that Campbell waived this claim by entering pleas, thereby invoking the guilty plea waiver rule. This “general rule” states that “a guilty [or] no contest ... plea ‘waives all nonjurisdictional defects, including constitutional claims[.]’” *State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (citation and footnote omitted; brackets in *Kelty*). The rule includes claims based on a violation of the right to a speedy trial. *Hatcher v. State*, 83 Wis. 2d 559, 563, 266 N.W.2d 320 (1978). Furthermore, the rule applies even when the defendant attempts to preserve the issue by raising it with the circuit court. *State v. Skamfer*, 176 Wis. 2d 304, 312, 500 N.W.2d 369 (Ct. App. 1993). However, an ineffective assistance of counsel claim, when the “alleged ineffectiveness is put forward as grounds for plea withdrawal,” is an exception to the guilty plea waiver rule. *State v. Villegas*, 2018 WI App 9, ¶47, 380 Wis. 2d 246, 908 N.W.2d 198.

In his postconviction motion, as well as on appeal, Campbell attempts to frame his ineffective assistance claim in terms of a basis for plea withdrawal. However, he does not develop an argument that involves the standard for plea withdrawal, and we will not develop arguments for parties. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). Furthermore, as with his postconviction motion, Campbell failed to respond to the State’s

⁵ The State points out that Campbell’s appellate brief does not comply with WIS. STAT. RULE 809.19(1)(d)-(e), in that it does not contain any citations to the record, and suggests that we may decline to consider his arguments on the merits for that reason. Appellate counsel for Campbell replied that RULE 809.19(1)(d) merely requires “references to the record,” which are generally set forth in his brief. That statement is inaccurate. See *Stuart v. Weisflog’s Showroom Gallery, Inc.*, 2006 WI App 109, ¶36, 293 Wis. 2d 668, 721 N.W.2d 127 (“[l]aunching an argument unsupported by appropriate citations to the record violates WIS. STAT. RULE 809.19(1)(d) and (e),” and this court has “no obligation either to forage through a voluminous record for facts supporting a party’s contention or to consider an inadequately presented argument”). We find counsel’s response to be intentionally obtuse and disingenuous, and we caution counsel that compliance with the Rules of Appellate Procedure is required.

guilty plea waiver rule argument. He has therefore conceded this point. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (providing that unrefuted arguments are deemed conceded).

Moreover, even if Campbell’s speedy trial claim is not waived, it fails. As discussed above, courts use the four-factor “balancing test” established in *Barker* to determine whether the right to a speedy trial has been violated. *Id.*, 407 U.S. at 530. Again, those four factors are: (1) the length of delay; (2) the reason for the delay; (3) the defendant’s assertion of his right; and (4) prejudice to the defendant. *Id.* at 530-32. This test “weighs the conduct of the prosecution and the defense and balances the right to bring the defendant to justice against the defendant’s right to have that done speedily.” *State v. Urdahl*, 2005 WI App 191, ¶11, 286 Wis. 2d 476, 704 N.W.2d 324. However, the right to a speedy trial “is not subject to bright-line determinations and must be considered based on the totality of circumstances that exist in the specific case.” *Id.*

Whether a defendant has been denied his constitutional right to a speedy trial is a question of law that we review *de novo*. *Id.*, ¶10. However, the findings of fact made by the circuit court will be upheld unless they are clearly erroneous. *Id.*

The first *Barker* factor, the length of the delay, is the “triggering mechanism used to determine whether the delay is presumptively prejudicial.” *Urdahl*, 286 Wis. 2d 476, ¶12. “Generally, a post-accusation delay approaching one year is considered to be presumptively prejudicial.” *Id.* Furthermore, “it is only necessary to inquire into the other *Barker* factors when a delay is presumptively prejudicial.” *State v. Provost*, 2020 WI App 21, ¶27, 392 Wis. 2d 262, 944 N.W.2d 23. In this case, because the circuit court found that Campbell initially asserted his

speedy trial right in August 2018—more than a year before the matter was ultimately resolved—the court concluded that the delay was presumptively prejudicial, and engaged in a **Barker** analysis.⁶ See *Provost*, 392 Wis. 2d 262, ¶27.

In addition to being the triggering mechanism for review, the first **Barker** factor has the court consider “the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim.” *Urdahl*, 286 Wis. 2d 476, ¶12 (citation omitted). This part of the speedy trial analysis is “significant,” as “the presumption that pretrial delay has prejudiced the accused intensifies over time.” *Id.* (citation omitted).

As noted above, at the hearing on Campbell’s pretrial motion regarding the speedy trial violation, the circuit court reviewed and discussed the delays at length with regard to the first **Barker** factor, and allocated responsibility accordingly in accordance with the second factor—the reasons for the delays. Of the 940 days that the case had been pending at the time of Campbell’s motion, the court found that he was responsible for 535 days—a “significant portion” of those delays—primarily due to his absconding while he was out on bail. See *Foster v. State*, 70 Wis. 2d 12, 17, 233 N.W.2d 411 (1975) (stating that “[a]bsconding constitutes a waiver of right to speedy trial,” and therefore the “time span of the absconding” is subtracted from the speedy trial calculation (footnote omitted)).

Campbell’s absconding also resulted in the need for the appointment new counsel, which led to additional delays relating to new counsel’s need to obtain and review the case file. The

⁶ The time span from Campbell’s initial assertion of his right to a speedy trial in August 2018, to his conviction on September 24, 2021, is just over three years. Thus, the State concedes that because the length of the delay was more than a year and presumptively prejudicial, a **Barker** analysis is required.

case was further complicated by additional charges filed in other jurisdictions against Campbell for offenses he committed during the time he absconded. Other delays attributed to Campbell include his refusal to leave his cell where he was being held in Racine County to appear at hearings in Milwaukee County in December 2019 and January 2020.

In contrast, ninety-five days of the delays were attributed to the State, with the remainder of time found to be normal court proceedings, including delays relating to the pandemic. All of these findings are supported by the record, and thus are not clearly erroneous. *See Urdahl*, 286 Wis. 2d 476, ¶10; *Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶11, 290 Wis. 2d 264, 714 N.W.2d 530 (stating that the circuit court's findings of facts are not clearly erroneous if they are supported by the record).

Relatedly, for the analysis of the third factor, Campbell's assertion of his speedy trial right, we again observe that Campbell's initial speedy trial demand was "broken up" by his absconding. He did not reassert his speedy trial right until December 21, 2020, when all courts were experiencing tremendous backlogs due to the pandemic. Campbell ultimately resolved the matter with a plea approximately nine months after he reasserted his speedy trial demand.

With regard to the fourth factor, prejudice to the defendant, consideration is based on the interests that the speedy trial right was designed to protect: "[p]revention of oppressive pretrial incarceration, prevention of anxiety and concern by the accused, and prevention of impairment of a defense." *State v. Ziegenhagen*, 73 Wis. 2d 656, 671, 245 N.W.2d 656 (1976). In his pretrial motion, Campbell made general, conclusory arguments regarding the difficulty in preparing a defense with the passage of so much time, and the anxiety of waiting for a resolution. At the hearing on that motion, the circuit court rejected those arguments, stating again that most

of the delays in this case were due to Campbell's absconding and his other conduct. Campbell's allegations of prejudice in his postconviction motion and on appeal are the same general and conclusory arguments as those in his pretrial motion, offering no specific facts to support his allegations. *Cf. id.* at 671-73 (concluding that the defendant was prejudiced because the record reflected that a majority of the defendant's witnesses were not available for trial due to delays that were wholly attributed to the State).

After weighing the *Barker* factors, we conclude that, based on the totality of the circumstances, Campbell's right to a speedy trial was not violated. *See Urdahl*, 286 Wis. 2d 476, ¶11. Therefore, the court did not err in denying Campbell's speedy trial claim in his postconviction motion.

We thus turn to Campbell's ineffective assistance of counsel claim. In order to prove ineffective assistance, a defendant must show that his trial counsel's performance was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Furthermore, a claim of ineffective assistance requires that a postconviction evidentiary hearing be held "to preserve the testimony of trial counsel." *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979). However, the circuit court is only required to hold an evidentiary hearing if the defendant has alleged "sufficient material facts that, if true, would entitle the defendant to relief." *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. The court need not grant an evidentiary hearing if the postconviction motion "does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief." *Id.* In those instances, the circuit court may, in its discretion, deny the motion without a hearing. *Id.*

To be sufficiently pled, a postconviction motion “must include facts that ‘allow the reviewing court to meaningfully assess [the defendant’s] claim.’” *Id.*, ¶21 (citation omitted; brackets in *Allen*). In other words, the motion must include a “factual basis” that supports the assertions in the motion. *Id.* This is a question of law that we review *de novo*. *Id.*, ¶9.

The circuit court determined that Campbell’s ineffective assistance claim did not allege sufficient facts to support his argument that he may have rejected the plea offer and gone to trial if he had understood the “true amount” of sentence credit that he was entitled. For a claim of ineffective assistance that relates to a plea to be sufficient, “a defendant must make more than a conclusory allegation that he or she would not have pled but would have gone to trial.” *State v. Jeninga*, 2019 WI App 14, ¶14, 386 Wis. 2d 336, 925 N.W.2d 574. Indeed, a sufficient factual basis will generally include “the five ‘w’s’ and one ‘h’; that is, who, what, where, when, why, and how.” *Allen*, 274 Wis. 2d 568, ¶23.

In his postconviction motion, Campbell does not definitively allege that he would not have entered pleas had he known the actual amount of sentence credit he would receive. Rather, he states only that he “*may* not have agreed to go a plea hearing had he known the true amount of sentencing credit that he was due.”⁷ (Emphasis added.) Furthermore, Campbell does not include any specific facts regarding why he would have gone to trial on the nine counts he was facing as

⁷ On appeal, Campbell attempts to remedy this issue with his allegation, stating in his appellate brief that he “*would* have not taken the plea offer and would have proceed [sic] to trial” had he been informed of the correct amount of sentence credit. (Emphasis added.) However, this court reviews “only the allegations contained in the four corners of [a defendant’s] postconviction motion,” not any additional allegations contained in the appellate brief. See *State v. Allen*, 2004 WI 106, ¶27, 274 Wis. 2d 568, 682 N.W.2d 433.

opposed to entering pleas on three of those counts. Simply put, Campbell has not alleged sufficient facts that would allow us to meaningfully assess his claim. *See id.*, ¶21.

We therefore conclude that Campbell's postconviction motion was not sufficiently pled to warrant an evidentiary hearing. *See id.*, ¶9; *see also Jeninga*, 386 Wis. 2d 336, ¶¶17-18. Therefore, the circuit court did not erroneously exercise its discretion by rejecting Campbell's ineffective assistance claim without a hearing. *See Allen*, 274 Wis. 2d 568, ¶9.

In short, Campbell's speedy trial violation claim and his ineffective assistance of counsel claim both fail. Accordingly, we affirm his judgment of conviction and the order denying his postconviction motion.

Upon the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals