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DISTRICT II

May 28, 2025

To:

Hon. Rebecca L. Persick
Circuit Court Judge
Electronic Notice

Chris Koenig
Clerk of Circuit Court
Sheboygan County Courthouse
Electronic Notice

Jacob J. Wittwer
Electronic Notice

Jason P. Robinson, #659355
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You are hereby notified that the Court has entered the following opinion and order:

2024AP418 State of Wisconsin v. Jason P. Robinson (L.C. #2015CF162)

Before Gundrum, P.J., 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).

Jason P. Robinson, pro se, appeals from an order denying his WIS. STAT. § 974.06(4) (2023-24)[1] postconviction motion. Robinson sought to withdraw his plea on the grounds that the State breached the plea agreement; his plea was not knowingly, voluntarily, and intelligently entered; and the circuit court failed to discuss the elements of the offense with him on the Record. He also asserts that his counsel provided ineffective assistance in failing to object to the purported breach of the plea agreement and allegedly inflammatory remarks made by the

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

prosecutor. 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. We affirm.

In 2015, the State charged Robinson with repeated sexual assault of a child and causing a child to view sexual activity. In 2016, the State charged Robinson in a second case with sexual assault of a child and causing a child to view sexual activity. The cases were consolidated and resolved globally with a plea bargain wherein Robinson would plead no contest to repeated sexual assault of a child in the 2015 case. Two of the remaining charges would be dismissed and read in, and the third charge would be dismissed outright. The State agreed to a joint sentencing recommendation of 12.5 years of initial confinement followed by 15 years of extended supervision. The circuit court accepted the plea and ordered a presentence investigation report (PSI). The PSI recommended confinement of 13 to 16 years followed by 5 to 6 years of extended supervision. After presenting the joint recommendation to the court, the State referenced the PSI writer's recommendation:

> I would note that the agent here is recommending 13 to 16 years' incarceration alongside five to six years' extended supervision. So while there is a difference in our recommendations about the length of extended supervision, [a] long period of incarceration certainly is consistent between the two recommendations.

The circuit court rejected the joint sentencing recommendation because it would "unduly depreciate" the crimes Robinson committed. Instead, the court sentenced Robinson to 20 years' initial confinement followed by 15 years' extended supervision.

Robinson's appellate counsel filed a no-merit report, which addressed whether Robinson's plea was knowingly, voluntarily, and intelligently entered and whether sentencing was erroneous. Robinson did not file a response to the no-merit report. *See* ***State v. Robinson***,

No. 2018AP675-CRNM, unpublished op. and order at 1 (WI App Oct. 10, 2018). This court reviewed the report and conducted an independent review of the Record. ***Id.*** We examined whether the plea colloquy satisfied WIS. STAT. § 971.08, ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), and ***State v. Hampton***, 2004 WI 107, ¶38, 274 Wis. 2d 379, 683 N.W.2d 14. *See* ***Robinson***, No. 2018AP675-CRNM at 2-5. We concluded there was no meritorious ground upon which Robinson could seek plea withdrawal. ***Id.*** at 4-5. We explained that the Record demonstrated Robinson entered his plea knowingly, voluntarily, and intelligently—that he understood the elements of the offense. ***Id.*** To the extent the plea colloquy was imperfect, we said:

> Despite the potential defect in the plea colloquy, we conclude that a postconviction motion for plea withdrawal lacks arguable merit. A motion to withdraw a plea is only meritorious if the defendant can allege that he did not know or understand that aspect of his plea that is related to a deficiency in the plea colloquy. ***State v. Brown***, 2006 WI 100, ¶62, 293 Wis. 2d 594, 716 N.W.2d 906[.] In reference to Robinson's acknowledgement during the plea colloquy that he reviewed the elements of the offense with counsel, the no-merit report notes that: "In speaking to Robinson, it is counsel's understanding that it could not be argued in good faith that [Robinson] did not understand such." Robinson has not disputed counsel's representation. Thus, Robinson cannot make the required allegation that he did not understand the nature of the charge, and there is no arguable merit to a claim that his plea was not knowingly entered. *No issue of merit exists from the plea taking*.

Robinson, No. 2018AP675-CRNM at 4 (second alteration in original; emphasis added).

Five years later, Robinson, pro se, filed the WIS. STAT. § 974.06 motion underlying this appeal. He asked for plea withdrawal on the ground that the State's reference to the PSI's sentencing recommendation (and other comments about the egregiousness of Robinson's crimes) constituted a breach of the plea agreement. He further asserted his trial counsel was ineffective for not objecting to the alleged breach. Finally, he alleged that he was confused about the

charges and the circuit court failed to review the elements of the offense during the plea colloquy—resulting in a plea that was not knowing, voluntary, or intelligent.

The circuit court denied Robinson's motion on multiple grounds. First, it found that Robinson's motion was untimely. Second, it rejected Robinson's claims on the merits, concluding that there was no breach of the plea agreement and that Robinson understood the elements of the offense. Third, it concluded that Robinson failed to allege facts that warranted an evidentiary hearing. Robinson appeals.

On appeal, the State concedes that the circuit court erred in finding Robinson's motion untimely. We agree that this was error[2] but address it no further as it does not impact our decision. We conclude that Robinson's claims are barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), as they were already raised and rejected, or could have been raised, during his direct no-merit appeal. *See also* ***State v. Tillman***, 2005 WI App 71, ¶2, 281 Wis. 2d 157, 696 N.W.2d 574 (holding that ***Escalona-Naranjo***'s procedural bar applies in no-merit appeals).

As noted, Robinson's appellate counsel filed a no-merit report addressing plea withdrawal and sentencing. We reviewed the report and independently reviewed the Record for any potentially meritorious arguments that appellate counsel may have overlooked. *See* ***Robinson***, 2018AP675-CRNM. Our decision demonstrates that we conducted a careful review of the entire Record and in particular the plea hearing to determine whether there was any basis

[2] "A motion for relief under § 974.06 'is a part of the original criminal action, ... and may be made at any time.'" ***State v. Allen***, 2010 WI 89, ¶23, 328 Wis. 2d 1, 786 N.W.2d 124 (omission in original; citation omitted).

upon which Robinson could withdraw his plea. ***Id.*** We also reviewed the sentencing hearing to ascertain whether there was any arguably meritorious appellate issue arising from it. ***Id.*** We concluded there was no merit to either and that no other potential meritorious issues existed. ***Id.*** at 4-5. It is clear from our no-merit decision, which affirmed Robinson's conviction, that we followed the no-merit procedures and therefore may confidently apply the ***Escalona-Naranjo*** procedural bar. *See* ***State v. Allen***, 2010 WI 89, ¶¶31, 93, 328 Wis. 2d 1, 786 N.W.2d 124 (holding that the procedural bar applies following a no-merit appeal when the no-merit procedures are followed and the court has sufficient confidence in its review).

First, our no-merit decision explicitly discussed and rejected Robinson's claims about his plea not being knowingly, voluntarily, and intelligently entered. ***Robinson***, 2018AP675-CRNM at 2-4. We addressed both his understanding of the plea and the circuit court's failure to explain the elements of the crime. ***Id.*** Second, although our prior decision did not specifically discuss whether the State's remarks or reference to the PSI recommendations constituted a breach of the plea agreement, it is clear that our independent review did not see it—or anything else—as an issue with any merit. *See* ***id.*** at 5. The Record confirms as much as it reflects that the State repeatedly and correctly told the court that it was recommending a sentence of 12.5 years of initial confinement and 15 years of extended supervision as agreed to in the plea bargain. In informing the court of the PSI's recommended sentence and in describing the egregious nature of the crime, the State did not fail "to abide by the negotiated sentencing recommendation." *See* ***State v. Nietzold***, 2023 WI 22, ¶8, 406 Wis. 2d 349, 986 N.W.2d 795 ("A plea agreement is breached when a prosecutor fails to abide by the negotiated sentencing recommendation."); ***State v. Duckett***, 2010 WI App 44, ¶18, 324 Wis. 2d 244, 781 N.W.2d 522 (concluding no breach occurred when State advised circuit court of PSI's recommended sentence). And, a lawyer's

failure to object to a nonmeritorious issue does not constitute ineffective assistance. ***State v. Stroik***, 2022 WI App 11, ¶36, 401 Wis. 2d 150, 972 N.W.2d 640 (concluding that counsel's "failure to make an objection that would have been properly overruled by the court" does not constitute ineffective assistance).

In an attempt to get around ***Escalona-Naranjo***'s procedural bar, Robinson argues that he had a sufficient reason for not filing a response to his trial lawyer's no-merit report or raising these issues sooner. He says that until he read our no-merit decision and had his case reviewed by a "jailhouse lawyer," he believed his case did not have any meritorious appellate issues. A jailhouse lawyer's opinion, however, does not nullify this court's careful and independent review of the Record during the no-merit appeal wherein we concluded there were no meritorious issues. Moreover, Robinson has failed to prove that we did not follow the no-merit procedure so as to avoid ***Escalona-Naranjo***'s procedural bar.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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