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DISTRICT IV

July 17, 2025

To:

Hon. Faun Marie Phillipson
Circuit Court Judge
Electronic Notice

Laura Marie Kohl
Electronic Notice

Melanie Leutenegger
Clerk of Circuit Court
Green County Courthouse
Electronic Notice

Shasta C. Howell
127 N. Walnut St.
Janesville, WI 53548

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

2024AP963-CR

State of Wisconsin v. Shasta C. Howell (L.C. # 2022CM8)

Before Graham, 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).

This is a direct appeal of a judgment of conviction that was entered against Shasta Howell after she pled guilty to two misdemeanor counts in a Green County case. Howell, who voluntarily discharged her appointed postconviction counsel and is representing herself in this appeal, makes various arguments about the circuit court proceedings and the conditions she was subjected to while she was in jail in a different county for a separate case. I reject all of Howell's arguments and affirm the judgment of conviction.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

Background

The State filed a criminal complaint in January 2022 that charged Howell with two counts of misdemeanor retail theft and four counts of misdemeanor bail jumping. The Office of the State Public Defender (SPD) appointed counsel for Howell in April 2022, and from that point forward, Howell was represented by counsel throughout the circuit court proceedings.

Despite being represented by counsel, Howell attempted to file pro se motions with the circuit court. She asserts that she filed a pro se speedy trial demand in June 2022, but no such demand appears in the circuit court record. She also asserts that she instructed her appointed counsel to file a motion to dismiss the criminal complaint, and that counsel declined to do so. Then, in September 2022, Howell filed a pro se motion to dismiss, which argued that the court did not have jurisdiction over the case because law enforcement did not follow legal procedure or conduct a lawful investigation or arrest. The court did not act on Howell's pro se submission.

In December 2022, Howell entered a plea agreement pursuant to which she pled guilty to the retail theft charges. The bail jumping charges were dismissed and read in at sentencing. The circuit court accepted Howell's plea and sentenced her to two years of probation.

Appointed trial counsel filed a notice of intent to pursue postconviction relief on Howell's behalf, and SPD appointed counsel to represent Howell in postconviction proceedings and on appeal. Howell's postconviction counsel eventually filed a no-merit notice of appeal, meaning that, in counsel's opinion, there were no nonfrivolous grounds for challenging her conviction or sentence. *See* WIS. STAT. RULE § 809.32; *Anders v. California*, 386 U.S. 738 (1967).

Then, in May 2024, Howell filed a pro se motion that asked the circuit court to vacate the judgment of conviction. The motion claimed, among other things, that the court lacked personal jurisdiction over Howell because the complaint did not identify her by her legal name. Howell's appointed postconviction counsel did not pursue Howell's pro se motion, and the court did not act on it.²

Shortly thereafter, at Howell's request, Howell's appointed postconviction counsel asked this court to allow her to withdraw from representation. Counsel indicated that Howell did not want to pursue a no-merit appeal, and that Howell wanted to represent herself with respect to the postconviction and appellate proceedings. We issued orders notifying Howell that, before we would permit her counsel to withdraw, Howell was required to affirmatively waive her right to be represented by counsel during postconviction proceedings and on appeal.

Howell submitted a response indicating her intent to discharge appointed counsel and to proceed pro se. Her letter stated that she understood the risks of waiving the right to counsel at this stage of the proceeding, and that she nevertheless wanted to do so. Her letter further stated that she believed that no postconviction motion was necessary, and that she intended to pursue the issues that she wanted to raise in a direct appeal. We issued an order that allowed appointed counsel to withdraw and that set a deadline for Howell to file an appellant's brief.

² In her appellant's brief, Howell asserts that she filed three pro se motions to vacate the judgment in 2024, but only the May 2024 motion appears in the circuit court record. As for the other motions that Howell asserts she filed, she may be referring to a writ of mandamus that she filed in the court of appeals with respect to multiple circuit court cases, including this Green County case, and various motions that she filed in that writ action.

Discussion

In her appellant’s brief, Howell argues that the judgment of conviction should be vacated due to multiple violations of her and her husband’s constitutional rights. Howell’s arguments are somewhat difficult to follow, but I describe them as best as I understand them.³ As explained in the analysis that follows, I ultimately conclude that none of these arguments have merit. Many of Howell’s arguments are barred by the guilty-plea-waiver rule, or because Howell did not preserve the arguments during the trial or postconviction proceedings and is instead raising them for the first time on appeal. *See State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (describing the guilty-plea-waiver rule, which, with certain exceptions, provides that a guilty plea “waives all nonjurisdictional defects, including constitutional claims” (citation omitted)); WIS. STAT. §§ 809.30(2)(h), 974.02 (requiring a defendant to file a postconviction motion in the circuit court as a precursor to an appeal, except with respect to the sufficiency of the evidence and certain issues that were sufficiently raised in the circuit court). Other arguments are undeveloped, *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (a court need not address undeveloped arguments), or beyond the scope of a criminal appeal.

Howell contends that she is not guilty of retail theft because her husband paid for the items she was accused of stealing. But Howell does not provide any record support for this assertion, and even more importantly, Howell pled guilty to the charges, and therefore affirmatively waived the right to make the State prove her guilt.

³ I appreciate the thorough respondent’s brief that was filed by the State, which identifies the relevant materials in the circuit court record and provides helpful context for understanding the various arguments that Howell is raising on appeal.

Howell also argues that certain evidence should have been suppressed, or perhaps that she should have been given the opportunity to seek its suppression. She contends that law enforcement never gave her *Miranda* warnings, and she argues that she did not have the opportunity to object to certain unspecified evidence in the State's possession.⁴ These arguments are foreclosed by the guilty-plea-waiver rule, and also because Howell did not preserve these issues by raising them during the circuit court proceedings or in a postconviction motion.⁵

Howell also makes an argument about the speedy trial demand that she allegedly attempted to make in June 2022. This argument is unavailing for at least two reasons. First, there is no speedy trial demand in the record, nor is there any reference to a speedy trial demand in any of the transcripts. Second, even if appointed trial counsel had filed a speedy trial demand on Howell's behalf in June 2022, Howell does not identify any remedy that she would be entitled to receive at this point.⁶

⁴ *Miranda v. Arizona*, 384 U.S.436 (1966).

⁵ Howell may be arguing that she preserved these issues in the pro se motions that she filed in the circuit court, at a time while she was represented by appointed counsel. If Howell is making that argument, it is incorrect. A defendant has a right to representation by counsel or to self-representation, but not both, and the court was not required to consider Howell's pro se motions. See *Moore v. State*, 83 Wis. 2d 285, 298-300, 265 N.W.2d 540 (1978); *State v. Wanta*, 224 Wis. 2d 679, 699, 592 N.W.2d 645 (1999).

⁶ The remedy for a statutory speedy trial violation is release from pretrial custody, see WIS. STAT. § 971.10(2), (4), and Howell is not currently in custody pending trial. The remedy for a constitutional speedy trial violation is dismissal of the charges, but only if a defendant satisfies a four-part test set forth in *Barker v. Wingo*, 407 U.S. 514 (1972). See *State v. Ramirez*, 2025 WI 28, ___ Wis. 2d ___, ___ N.W.3d ___. Here, Howell does not make any argument that the *Barker* test was satisfied. And it would be difficult to make a persuasive argument to that effect, given that it does not appear from the record that the State caused any significant delay during the eleven months between the January 2022 complaint and the December 2022 sentencing. *Ramirez*, ___ Wis. 2d ___, ¶¶39-41.

Howell next argues that the circuit court lacked personal jurisdiction over her because the complaint does not identify her by the correct name. Specifically, Howell asserts that her name has been Shasta Casey Howell-McCallum ever since she got married in February 2016. Howell provides no record evidence to support her assertion about her legal name, but even if her legal name differs in some respects from the name identified in the criminal complaint, that does not mean that the circuit court lacked jurisdiction over the criminal case. As the State points out, WIS. STAT. § 971.31(8) provides that “[n]o complaint, indictment, information, process, return or other proceeding shall be dismissed or reversed for any error or mistake where the case and the identity of the defendant may be readily understood by the court; and the court may order an amendment curing such defects.” Here, the record shows that Howell’s identity was readily understood, and that Howell used the name that appears in the complaint in documents she submitted to the court and when she entered her plea.

Howell next argues that she was denied the effective assistance of counsel because her appointed trial counsel would not pursue her pro se motion to dismiss. This argument fails for at least the following reasons. First, a claim of ineffective assistance of trial counsel cannot be reviewed on appeal unless the defendant pursued that claim by filing a postconviction motion in the circuit court, and Howell did not file any such motion here. *State v. Balliette*, 2011 WI 79, ¶29, 336 Wis. 2d 358, 805 N.W.2d 334 (citing WIS. STAT. § 974.02). Second, even if she had pursued this argument through a postconviction motion, it would have been Howell’s burden to demonstrate deficiency and prejudice. *Strickland v. Washington*, 466 U.S. 668 (1984). Howell does not make either showing in this appeal. Most notably, Howell does not demonstrate deficient performance because she does not show that there was merit to the motion to dismiss that she wanted trial counsel to pursue. *State v. Maloney*, 2005 WI 74, ¶37, 281 Wis. 2d 595,

698 N.W.2d 583 (counsel is not deficient for declining to file a motion that would have been denied).

Howell argues that she was coerced into accepting the plea agreement by her appointed trial counsel and the State. Again, this argument fails because Howell did not preserve this issue in a postconviction motion to the circuit court. I also note that, even if she had pursued this argument through a postconviction motion, it would have been Howell's burden to demonstrate coercion. That would have been a heavy lift, given that the allegations Howell makes for the first time on appeal are conclusory, and that Howell specifically denied any such coercion during the plea and sentencing hearing. *State v. Bentley*, 201 Wis. 2d 303, 316-318, 548 N.W.2d 50 (1996) (to be entitled to a postconviction hearing, facts must be alleged that show a reasonable probability that but for counsel's error the defendant would have proceeded to trial).

Howell also makes several related arguments about the duty of care that law enforcement has, which Howell says they violated when she was in jail in Rock County on other charges.⁷ Whether or not Howell's allegations would state a civil claim, she does not explain how they could provide a basis for vacating her criminal conviction, which is the relief she seeks in this criminal case.

Finally, Howell argues that she has been subjected to cruel and unusual punishment, which warrants dismissal of the underlying judgment. But again, this issue is likely barred under

⁷ Specifically, Howell claims that law enforcement officers breached their duty of care to her husband and are responsible for his death because he was unable to care for himself after Howell's arrest. Howell also claims that government officials breached a duty of care they owed to Howell by ignoring the complaints that she was experiencing side effects from either her monitoring bracelet or her medication.

the guilty-plea waiver rule, and also because Howell did not preserve it by raising it during the circuit court proceedings or in a postconviction motion addressed to that court.

IT IS ORDERED that the 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