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DISTRICT I

July 22, 2025

To:

Hon. David A. Feiss
Reserve Judge

Nicholas DeSantis
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Shawn Anytonne Boyd 486694
Green Bay Correctional Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

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

2022AP955 State of Wisconsin v. Shawn Anytonne Boyd (L.C. # 2012CF3561)

Before White, C.J., Donald, P.J., and Colón, 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).

Shawn Anytonne Boyd, pro se, appeals from orders of the circuit court that denied his WIS. STAT. § 974.06 (2023-24)[1] postconviction motion and a reconsideration motion. 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. The orders are summarily affirmed.

According to the criminal complaint, Boyd and four juveniles planned to rob a convenience store in Milwaukee. Boyd was supposed to "beat the attendant up" if he came out of the locked register area. The juveniles entered the store and conducted a "snatch and grab,"

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

taking candy and other food from the store. The attendant left the locked area and chased the juveniles with a baseball bat. Boyd entered the store and hit the attendant in the head with a handgun multiple times, then continued to beat the attendant while the attendant was on the ground. Boyd dragged the attendant back to the locked area and ordered him to open the door. When the attendant did not comply, Boyd shot him, causing serious injury. All participants then left the store and went to Boyd's girlfriend's mother's home.

Police subsequently arrested three juveniles, who each identified Boyd as a perpetrator. Boyd was charged on July 17, 2012, with armed robbery with the use of force as a party to a crime, substantial battery with a dangerous weapon, first-degree reckless injury, and felony bail jumping. An amended information later charged Boyd with armed robbery with the use of force as party to a crime, substantial battery with a dangerous weapon, first-degree recklessly endangering safety with a dangerous weapon, felony bail jumping, and two counts of possession of a firearm by a person previously adjudicated delinquent.[2]

Boyd eventually entered no-contest pleas to armed robbery with the use of force as party to a crime and first-degree recklessly endangering safety without the weapons enhancer. The substantial battery charge was dismissed outright, and the three remaining charges were dismissed and read in. The circuit court ultimately imposed a 30 year sentence, consisting of 20 years' initial confinement and 10 years' extended supervision.

[2] One of the possession charges arose from a separate case that was joined with this case prior to the plea. That charge was dismissed; thus, that case is not before us on appeal.

Boyd did not pursue a postconviction motion, but his appellate attorney filed a no-merit report on his behalf. Boyd responded, and counsel filed a supplemental report. We affirmed. ***State v. Boyd***, No. 2016AP50-CRNM, unpublished op. and order (WI App Jan. 18, 2017).

In March 2022, Boyd filed the WIS. STAT. § 974.06 postconviction motion that underlies this appeal, seeking "plea withdrawal or resentencing based on claims of ineffective assistance of counsel, or breach of plea and defective plea colloquy." In the motion, Boyd claimed that: (1) the facts of record did not support the armed robbery charge, so defense counsel was ineffective for allowing Boyd to enter a no-contest plea to that offense; (2) defense counsel was ineffective because he persuaded Boyd to enter his plea by "promising" a five-year sentence from the judge originally assigned to the case;[3] and (3) he was sentenced on inaccurate information, reflected in the circuit court's inaccurate recitation of some facts.

The circuit court denied the motion as procedurally barred by ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 517 N.W.2d 157 (1994), and ***State v. Tillman***, 2005 WI App 71, 281 Wis. 2d 157, 696 N.W.2d 574, because Boyd had not raised these issues in his response to counsel's no-merit report. Boyd then moved for reconsideration, which was also denied. Boyd appeals.

"It is well-settled that a defendant must raise all grounds for relief in his or her original, supplemental or amended motion for postconviction relief." ***State v. Fortier***, 2006 WI App 11, ¶16, 289 Wis. 2d 179, 709 N.W.2d 893; *see also* WIS. STAT. § 974.06; ***Escalona***, 185 Wis. 2d at

[3] The case was originally assigned to the Honorable J.D. Watts. Because Judge Watts was mid-trial, the plea hearing was held before the Honorable Jeffrey A. Wagner. Judge Watts was also mid-trial on the sentencing date, and the case was again referred to Judge Wagner. However, Boyd requested substitution of Judge Wagner, and the sentencing hearing was held before the Honorable Daniel L. Konkol.

181. "[T]he phrase 'original, supplemental or amended motion'" encompasses both direct appeals and no-merit appeals. *See* ***State v. Lo***, 2003 WI 107, ¶42, 264 Wis. 2d 1, 665 N.W.2d 756 (citation omitted); ***Tillman***, 281 Wis. 2d 157, ¶27. Further, "when a defendant's postconviction issues have been addressed by the no merit procedure … the defendant may not thereafter again raise those issues[.]" ***Tillman***, 281 Wis. 2d 157, ¶19; ***State v. Witkowski***, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

Boyd's postconviction motion generally seeks plea withdrawal or resentencing based on "ineffective assistance of trial counsel, or breach of plea and a defective plea colloquy." However, our no-merit decision already concluded there was "no manifest injustice upon which Boyd could withdraw his pleas."[4] *See* ***Boyd***, No. 2016AP50-CRNM at 4. Therefore, to the extent that Boyd's current issues were raised in his no-merit response,[5] and to the extent that they have been addressed in our prior decision, they are barred from relitigation. *See* ***Tillman***, 281 Wis. 2d 157, ¶19.

To the extent that Boyd failed to raise his current issues in his no-merit response, he is also barred by ***Tillman*** and ***Escalona*** for not raising them at that time unless he has sufficient reason: a defendant may not "raise issues in a subsequent [WIS. STAT.] § 974.06 motion that he could have raised in response to a no-merit report, absent a 'sufficient reason' for failing to raise

[4] Examples of manifest injustice include an insufficient factual basis for the crimes to which the defendant has pled, ***State v. Nash***, 2020 WI 85, ¶32, 394 Wis. 2d 238, 951 N.W.2d 404; a defective plea colloquy, ***State v. Carlson***, 2014 WI App 124, ¶24, 359 Wis. 2d 123, 857 N.W.2d 446; ineffective assistance of counsel, ***State v. Dillard***, 2014 WI 123, ¶¶37, 68, 358 Wis. 2d 543, 859 N.W.2d 44; entry of an unknowing or involuntary plea, ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906; and a breach of the plea agreement, ***State v. Smith***, 207 Wis. 2d 258, 281, 558 N.W.2d 379 (1997).

[5] Boyd's no-merit response is not part of the record on appeal, so we are unable to verify what specific issues he raised.

the issues earlier in the no-merit appeal." ***State v. Allen***, 2010 WI 89, ¶4, 328 Wis. 2d 1, 786 N.W.2d 124. The defendant may have a sufficient reason for not raising issues earlier if he or she can show that appellate counsel and the court of appeals did not follow the no-merit process, a process that involves this court's "'full examination of all the proceedings' to search for any 'legal points arguable on their merits.'" ***Id.***, ¶¶58, 64 (citation omitted). However, such demonstration requires the defendant to do more than simply "identify an issue of arguable merit that the court of appeals did not discuss." ***Id.***, ¶83. Instead, "the defendant must do something to undermine our confidence in the court's decision, perhaps by identifying an issue of such obvious merit that it was an error by the court not to discuss it." ***Id.***

Here, with respect to the first two specific issues in Boyd's motion—sufficiency of the evidence to constitute armed robbery and alleged improper coercion by counsel—Boyd does not make any claims that the no-merit procedures were improperly followed. He therefore cannot establish a sufficient reason to avoid application of a procedural bar to those issues.

On his inaccurate sentencing information claim, Boyd argues that "it is clearly apparent, that the Wisconsin Court of Appeals 'overlooked' the inaccurate information the sentencing court relied on when fashioning its sentence upon the defendant." First, Boyd asserts that he did not take anything from the convenience store. He also takes issue with the circuit court's statement that Boyd "came back into the store, was beating the victim," because the record reflects that he only entered the store once, so it was incorrect to say he went "back" in the store. Boyd also complains that it was erroneous to describe him as "basically the leader," because the surveillance video shows the juveniles were there before he ever entered the store.

As the circuit court correctly noted, a defendant who asks for resentencing because the court relied on inaccurate information "must show both that the information was inaccurate and that the court actually relied on the inaccurate information in the sentencing." ***State v. Lechner***, 217 Wis. 2d 392, 419, 576 N.W.2d 912 (1998) (citation omitted). The defendant must make this showing by clear and convincing evidence. ***State v. Harris***, 2010 WI 79, ¶34, 326 Wis. 2d 685, 786 N.W.2d 409.

Here, the circuit court's analysis is on point. Boyd was charged and convicted of armed robbery *as a party to a crime*, and therefore, it was not error for the court to ascribe some responsibility for the robbery to Boyd even if he did not directly take items. Any suggestion that Boyd directly committed the robbery when it stated that he "came back into the store" was a *de minimis* error; some of the juveniles had exited and re-entered the store during the robbery, and the circuit court's statement simply reflects the group's dynamic. The circuit court also concluded that there was ample support in the record for the sentencing court to view the defendant as "basically the leader" in this case, including the fact that Boyd was a 23-year-old adult and his co-actors ranged in age from 12 to 17, as well as the fact that Boyd was the one who intervened with a firearm after the clerk chased the juveniles. While Boyd may disagree with being characterized as the leader, he has not demonstrated by clear and convincing evidence that any of the court's sentencing comments warrant the extraordinary remedy of resentencing or that this court overlooked an obvious inaccurate information claim during the no-merit appeal.[6]

[6] Boyd also appears to be suggesting the circuit court should not have considered him to have been armed, in light of the dismissal of the firearm possession charges. However, dismissal of possession charges as part of a plea bargain does not somehow suppress the fact of the firearm—it simply reduces Boyd's exposure to criminal liability for those offenses.

In short, nothing about the circuit court's comments in denying the postconviction motion undermines our confidence in the original court decision, and the circuit court did not err in denying the postconviction and reconsideration motions.

Upon the foregoing, therefore,

IT IS ORDERED that the orders 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