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DISTRICT II

January 25, 2016

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

2015AP1599-W State of Wisconsin ex rel. Anthony Gage Meyers v. Judy P. Smith
(L.C. # 2009CF205)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Anthony Gage Meyers petitions pro se for a writ of habeas corpus pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). He asks this court to vacate his judgment of conviction and remand the matter for a new trial. The respondent has filed a response opposing the petition, and Meyers has filed a reply to that response. Upon consideration of the parties' submissions, we deny the petition.

In April 2009, Meyers was charged with first-degree intentional homicide for fatally stabbing Shon Potschaider. During the jury instructions conference, the defense asked that the jury be instructed on self-defense, second-degree intentional homicide, and first-degree reckless

homicide. The circuit court granted the request. The jury eventually returned a verdict finding Meyers guilty of first-degree reckless homicide.

On direct appeal, Meyers argued that the evidence was insufficient to support his conviction. He also accused his trial counsel of ineffective assistance for (1) failing to request a second-degree reckless homicide instruction; (2) failing to request an instruction on retreat; and (3) waiving Meyers' right to elicit testimony of Potschaider's violent past. This court rejected Meyers' arguments and affirmed his conviction. *State v. Meyers*, No. 2011AP2230-CR, unpublished slip op. (WI App Dec. 19, 2013).

Meyers subsequently brought a motion for relief under WIS. STAT. § 974.06 (2013-14).¹ In it, he alleged that the jury was not properly instructed that the State had to disprove self-defense beyond a reasonable doubt. In an attempt to overcome the procedural bar to successive claims, Meyers maintained that his postconviction counsel was ineffective for failing to assert that his trial counsel was ineffective for failing to challenge the instructions. The circuit court denied Meyers' motion without a hearing, and this court affirmed. *State v. Meyers*, No. 2014AP2692, unpublished slip op. (WI App July 29, 2015).

Meyers now attempts to bring yet another claim of ineffective assistance of trial counsel. He alleges that his appellate counsel, who was also his postconviction counsel, argued in the circuit court but failed to argue on appeal that Meyers' trial counsel was ineffective for failing to inform and "prepare him for the fact that the suppression stipulation regarding his statement to law enforcement would be essentially waived/or overturned once he took the witness stand."

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

This time, Meyers seeks to overcome the procedural bar to successive claims by bringing this *Knight* petition and asserting that it was ineffective for appellate counsel to not raise that particular claim on appeal.

We will require a hearing on a *Knight* petition if the petition alleges sufficient facts which, if true, show that the defendant is entitled to relief. *State ex rel. Kyles v. Pollard*, 2014 WI 38, ¶47, 354 Wis. 2d 626, 847 N.W.2d 805. We may deny the petition when it does not raise such facts or presents only conclusory allegations. *See id.*; *State ex rel. Panama v. Hepp*, 2008 WI App 146, ¶22, 314 Wis. 2d 112, 758 N.W.2d 806.

Here, we are not persuaded that Meyers' petition alleges sufficient facts to show that he is entitled to relief. As noted by the respondent, the petition does not explain what the "suppression stipulation" was, how Meyers' statement to law enforcement was later used for impeachment, how trial counsel's performance was challenged below, or what the circuit court concluded after the postconviction hearing as to trial counsel's performance. It only alleges that the circuit court denied the motion because Meyers was present and should have been aware that his statement could have been used against him.

The petition also does not explain why this latest claim of ineffective assistance of trial counsel is "clearly stronger" than the claims that appellate counsel raised on appeal. *See State v. Starks*, 2013 WI 69, ¶60, 349 Wis. 2d 274, 833 N.W.2d 146. Indeed, the petition makes no attempt to compare its claim to the ones that appellate counsel raised. It simply says, in conclusory fashion, that if this court finds merit to the claim, then it should consider it "clearly stronger" to any claim already raised. Again, without more facts about the statement and its use, we cannot assess the claim's merits.

For these reasons, we must deny the petition.²

Upon the foregoing reasons,

IT IS ORDERED that the petition for a writ of habeas corpus is denied, without costs.

Diane M. Fremgen
Clerk of Court of Appeals

² We note that Meyers' petition is not verified as required by WIS. STAT. § 782.04. See *State ex rel. Santana v. Endicott*, 2006 WI App 13, ¶¶10-11, 288 Wis. 2d 707, 709 N.W.2d 515 (verification requires signing the document in the presence of a notary public). This is an additional reason for our denial.