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DISTRICT II

February 12, 2018

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

2018AP203-W

State of Wisconsin ex rel. Ezequiel Lopez-Quintero v. Michael A. Dittmann (L.C. # 2007CF535)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Ezequiel Lopez-Quintero petitions for a writ of habeas corpus pursuant to *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992). We deny the petition without requiring a response. WIS. STAT. RULE 809.51(2) (2015-16).¹

In April 2008, Lopez-Quintero was convicted of first-degree intentional homicide with use of a dangerous weapon and carrying a concealed weapon. He was advised of his right to

¹ All references to the Wisconsin Statutes are to the 2015-16 version.

seek postconviction relief and filed a form indicating that he planned to do so. However, his trial attorneys never filed a notice of intent to seek postconviction relief. Instead, more than two months after sentencing, they moved the circuit court for a new trial. The court denied that motion and provided Lopez-Quintero with a copy of the case's transcripts. No further action was taken.

Over nine years later, Lopez-Quintero, now represented by the Frank J. Remington Center at the University of Wisconsin Law School, filed a petition for a writ of habeas corpus. In it, he accuses his trial attorneys of ineffective assistance for failing to file a notice of intent or seek an extension of time to file one. According to Lopez-Quintero, he relied upon his attorneys entirely and did not know the consequences of their inaction due to his lack of English fluency, limited education, and unfamiliarity with the criminal justice system. He asks this court to reinstate his direct appeal rights.

The problem with Lopez-Quintero's petition is that it comes too late. In *State ex rel. Smalley v. Morgan*, 211 Wis. 2d 795, 565 N.W.2d 805 (Ct. App. 1997) *abrogated on other grounds by State ex rel. Coleman v. McCaughtry*, 2006 WI 49, 290 Wis. 2d 352, 714 N.W.2d 900, we denied a habeas petition because the petitioner did not timely seek relief from this court (eight-year delay). We stated that “[t]he purpose of habeas corpus ‘is to provide a prompt and effective judicial remedy to those who are illegally restrained of their personal liberty.’” *Id.* at 802 (citation omitted). We further stated that, “[t]he right to claim ineffective assistance of counsel for failure to commence an appeal does not exist indefinitely. Whether a defendant’s claim is made within a reasonable time must be evaluated on a case-by-case basis.” *Id.* Although Lopez-Quintero’s stated limitations can account for some delay in this case, it cannot

account for over nine years of delay. Accordingly, we are not persuaded that he sought habeas relief in a timely fashion and will deny the petition for that reason. Therefore,

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

Diane M. Fremgen
Acting Clerk of Court of Appeals