

No. 99-1008-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

AUDELL HERNANDEZ,

DEFENDANT-APPELLANT.

FILED

December 30, 1999

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COURT OF APPEALS
OF WISCONSIN

ERRATA SHEET

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PLEASE TAKE NOTICE that the attached page 2 is to be substituted for page 2 in the above-captioned opinion which was released on November 2, 1999.

evidence of waiver. He also claims that his counsel was ineffective by failing to inform him that he had an absolute right to testify and that the decision was his alone to make. He further contends that even if informed of the right, it was prior to trial and counsel was ineffective for failing to inform him again during trial. We conclude from our examination of the entire record, including the post-trial motions, that Hernandez's counsel fully advised him of his right to testify and that Hernandez knowingly, intelligently and voluntarily waived that right. We also determine that Hernandez has failed to develop a record to show that his counsel's assistance was ineffective. Accordingly, the judgment and order are affirmed.

¶1 Hernandez was charged with one count of first-degree intentional homicide in connection with the death of Julian Rodriguez. Rodriguez had been dating Hernandez's daughter and was going to take her to New York. Hernandez had an incestuous relationship with his daughter, and he was displeased that she had a boyfriend. Hernandez told his attorney that he got into a fight with Rodriguez and, after Rodriguez was slumped over the wheel in the car, he struck him in the base of the neck a number of times with a wrench. Hernandez later attempted to dispose of the body by putting it into Rodriguez's car trunk, driving to another county and setting fire to the car. Hernandez told the agent conducting the presentence investigation that Rodriguez had initiated the fight, that he knocked Rodriguez down and then kicked Rodriguez's head a number of times with steel-toed shoes.

¶2 Hernandez met with his attorney several times during the course of the action. Hernandez spoke only Spanish, and his attorney spoke only English. An interpreter was present for their meetings. They had two lengthy conversations regarding the trial and his rights at trial. At one of the meetings, counsel recommended that Hernandez plead no contest to first-degree intentional