

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 11, 2001

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 00-0879**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THOMAS J. STAMPER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Adams County:  
DUANE H. POLIVKA, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Thomas Stamper appeals from an order denying his motion for relief from two felony convictions. The motion alleged ineffective assistance of trial counsel, and the trial court denied it without a hearing. We affirm.

¶2 Stamper's convictions derive from an incident in which he held his ex-wife captive, severely beat her and did substantial damage to her car. Pursuant to a plea bargain, he entered no contest pleas to false imprisonment and substantial battery, both as a repeater. In return, the State dismissed two other felony charges. He was sentenced in March 1998 to a seven-year prison term and a consecutive eight-year probation term.

¶3 Stamper's postconviction motion alleged that he received ineffective assistance of counsel because he was not advised that he had a potential intoxication defense. He also alleged that counsel did not advise him that he had a defense based on the fact that his ex-wife was having an affair with his brother. The latter he describes as a provocation defense. The trial court denied the motion summarily, concluding that a hearing was not necessary on the allegations.

¶4 If a postconviction motion alleges facts that, if true, would entitle a defendant to relief, the trial court must hold an evidentiary hearing. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). However, if the motion presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may deny the motion without a hearing. *Id.*, 201 Wis. 2d at 309-10. Whether a motion alleges sufficient facts to require a hearing presents a question of law that we review independently. *Id.* at 310.

¶5 Stamper's motion failed to present sufficient facts to require a hearing on his alleged ineffective assistance of counsel claim. There was no question that Stamper was heavily intoxicated at the time he committed his offenses. However, his claim that he was so intoxicated and drugged that he could

not form the intent to commit the crimes is a conclusory allegation. The motion contained no supporting affidavits or offers of proof on that question.

¶6 Additionally, Stamper never disputed the facts presented in the complaint. They describe a sequence of events during which Stamper angrily confronted his ex-wife, imprisoned her in her home and beat her severely. After she escaped, he substantially damaged her car with the butt of a gun. When police arrived he acknowledged his acts and, upon further questioning, invoked his *Miranda* rights. Under these circumstances, the motion presented no plausible grounds to believe that Stamper was deprived of a meritorious intoxication defense by counsel's actions.

¶7 No hearing was necessary on Stamper's assertion that counsel failed to advise him that he had a potential adequate provocation defense. Provocation is not a defense to the charges against Stamper. WIS. STAT. § 939.44(2) (1999-2000).<sup>1</sup>

*By the Court.*—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.



