

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 3, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP1598-CR

Cir. Ct. No. 2003CF4125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS LEE HINES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Thomas Lee Hines appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. He argues that the circuit court erred when it denied his

motion for resentencing without a hearing. Because we conclude that the circuit properly denied the motion without holding a hearing, we affirm.

¶2 Hines pled guilty to one count of false imprisonment and four counts of lewd and lascivious behavior. Hines had exposed himself to and masturbated in front of a number of women on the campus of the University of Wisconsin–Milwaukee. On the false-imprisonment count, the court sentenced him to seven years of initial confinement and three years of extended supervision to be served concurrently to the revocation sentence he was already serving. On the lewd-and-lascivious behavior counts, the court sentenced him to nine months each to be served consecutive to all the other sentences.

¶3 Hines then filed a motion for postconviction relief. He argued that he was entitled to be resentenced because the court had erroneously considered that he played a part in his first attorney’s request to withdraw from his case. The circuit court denied the motion without a hearing. The court stated that it had been aware, and had acknowledged at sentencing, that Hines’ first attorney withdrew because of a conflict of interest.

¶4 We review the circuit court’s decision using a mixed standard of review:

First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review *de novo*. If the motion raises such facts, the circuit court must hold an evidentiary hearing. However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing. We require the circuit court “to form its independent judgment after a review of the record and pleadings and to support its decision by written opinion.”

We review a circuit court's discretionary decisions under the deferential erroneous exercise of discretion standard.

State v. Allen, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433 (citations omitted).

¶5 We conclude that the circuit court properly exercised its discretion when it denied Hines' motion without a hearing. The record demonstrates that the court did not misunderstand Hines' role in his first attorney's decision to withdraw. Hines had three attorneys before he entered his plea, and the court referred to his conduct with the second and third attorneys, including his behavior towards his attorney during sentencing. Further, the record shows that when the first attorney moved to withdraw, the circuit court admonished him quite seriously for having failed to inform Hines about this request before the hearing. Since the record does not support Hines' assertion that the trial court misunderstood his role in his first attorney's decision to withdraw, it was within the circuit court's discretion to deny the motion without a hearing. We affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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

