

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 20, 2002**

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 Nos. 01-1546**

Cir. Ct. No. 98-CM-1301

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**JEROD J. BINS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Winnebago County: BRUCE K. SCHMIDT, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Jerod J. Bins appeals from a judgment of conviction for disorderly conduct as a repeat offender and an order denying his request for

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

postconviction relief.<sup>2</sup> Bins argues that he was denied his state and federal constitutional right to counsel when he represented himself in a criminal prosecution in the absence of a valid waiver of counsel. Bins further argues that he is not procedurally barred from raising the invalid waiver of counsel issue. We conclude that the law of the case prohibits us from addressing this issue. We therefore affirm the judgment of conviction and order.

### FACTS

¶2 On June 11, 1998, Bins was charged with disorderly conduct as a repeat offender. Bins appeared pro se at the August 20, 1998 plea and sentencing hearing. At this hearing, the following exchange occurred addressing Bins's right to counsel:

THE COURT: Mr. Bins, first of all, you understand you have a right to an attorney?

THE DEFENDANT: Yes.

THE COURT: You don't have an attorney with you this afternoon. Do you wish to proceed without one?

THE DEFENDANT: Yes.

THE COURT: Do you understand, if you're determined to be indigent, the Court would appoint an attorney for you at no cost?

THE DEFENDANT: Yes.

THE COURT: But it's your decision to proceed on your own?

---

<sup>2</sup> This case was originally consolidated for purposes of briefing and disposition with another Bins case from District III, out of Outagamie county, because of the similarity of issues. We later determined that consolidation was improvidently granted. By an order dated February 6, 2002, the consolidation order was vacated and the other case was returned to District III for disposition.

THE DEFENDANT: Yes, sir.

....

THE COURT: The Court will accept your waiver of right  
your to an attorney. [sic]

The trial court accepted Bins's no contest plea, withheld sentence and placed him on probation for twelve months. Bins did not seek either a direct appeal or postconviction relief from the August 20, 1998 judgment of conviction.

¶3 Bins's probation was eventually revoked and he returned to court on May 13, 1999, for sentencing after revocation. The trial court imposed a three-year sentence consecutive to any other sentence.

¶4 On May 19, 1999, Bins filed a notice of intent to pursue postconviction relief. On July 8, 1999, the state public defender's office appointed Attorney Jeffrey T. Oswald to represent Bins in his appeal. Oswald filed a statement on transcript and a notice of appeal on November 19, 1999. However, there is no evidence in the record that this appeal was ever taken.

¶5 On October 12, 1999, Bins pro se filed a "Motion and Supporting Affidavit for the Transcription of the Trial Record," a "Motion for Leave to Proceed In Forma Pauperis" and a "Declaration in Support of Request to Proceed In Forma Pauperis."

¶6 On February 17, 2000, Bins filed an affidavit of indigency and order.<sup>3</sup> On June 26, 2000, Bins pro se filed a "Motion for Verification of Statute

---

<sup>3</sup> This order indicates that the affidavit of indigency was not approved; it is unclear why this affidavit and all the financial information was even filed and why the court denied its approval as the requested motions involved Bins's criminal case, not a separate civil action, WIS. STAT. § 974.06(2), and the establishment of indigency is not necessary to advance postconviction proceedings.

Convicted Under” and on August 14, 2000, Bins filed a “Motion for Release Pending Appeal.” On September 11, 2000, Bins submitted a letter to the court inquiring about the status of his motions. On October 26, 2000, the trial court denied Bins’s motion for release pending appeal.

¶7 On May 11, 2001, Bins filed a pro se motion for postconviction relief pursuant to WIS. STAT. § 974.06. This motion was denied without a hearing on May 17, 2001; the trial court concluded that the motion failed to allege sufficient facts to raise questions of fact and presented only conclusory allegations. Bins appeals from this order, filing his notice of appeal on June 5, 2001.

### DISCUSSION

¶8 Bins argues that he was denied his state and federal constitutional right to counsel when he represented himself in a criminal prosecution in the absence of a valid waiver of counsel. Bins further argues that he is not procedurally barred from raising the invalid waiver of counsel issue.

¶9 We must comment that the brief from the Winnebago county district attorney’s office answering Bins’s arguments is woefully inadequate. The brief is less than three pages long, it provides no facts and no citations to the record, and it does not comport with the requirements of WIS. STAT. RULE 809.19 governing appellate practice and procedure. The essence of Winnebago county’s meager argument is that Bins did not allege sufficient facts to warrant an evidentiary hearing, *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996), and that Bins’s claims are procedurally barred pursuant to *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994).

¶10 We conclude that a previous decision on this issue precludes us from addressing this issue. While not included in the record in this matter, a review of our own records revealed that we have previously addressed and rejected Bins’s arguments. In *State v. Bins*, No. 99-3035-CRNM, unpublished slip op. (WI App June 14, 2000), we rejected Bins’s pro se claims that he did not properly waive his right to counsel or effectively represent himself. We concluded that because the judgment being appealed by Bins was entered after revocation of probation, he could not appeal issues related to the entry of his no contest plea or the original judgment finding him guilty of disorderly conduct, pursuant to *State v. Tobey*, 200 Wis. 2d 781, 784, 548 N.W.2d 95 (Ct. App. 1996). Consequently, we would “not consider many of the issues raised by Bins in his response ... includ[ing] his claims ... that his no contest plea was not knowingly, voluntarily and intelligently entered; and that he did not properly waive his right to counsel or effectively represent himself.”

¶11 Our prior decision is the law of the case. A decision on a legal issue by an appellate court establishes the law of the case that must be followed in all subsequent proceedings in the case in both the circuit and appellate courts. *State v. Brady*, 130 Wis. 2d 443, 448, 388 N.W.2d 151 (1986). A decision on an issue of law made at one stage of a case becomes a binding precedent to be followed in successive stages of litigation and the law of the case doctrine “generally restrains a circuit court from reconsidering an order that an appellate court has affirmed.” *Id.* at 446-47. Because we have already addressed and rejected Bins’s claims, we cannot address them here.<sup>4</sup>

---

<sup>4</sup> However, no one would ever have been made aware of this decision from the record submitted to us. It appears that the record submitted to this court was incomplete; while there  
(continued)

## CONCLUSION

¶12 The law of the case precludes us from addressing Bins's arguments. We therefore affirm the judgment of conviction and order.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

---

was evidence that Bins filed a notice of intent to appeal, there is absolutely no record evidence that the appeal was ever taken or of the disposition of that appeal. It was only after examining our own internal records that we discovered the no merit decision settling Bins's appeal. It is the appellant's responsibility to ensure that the record is adequate and sufficiently complete to facilitate appellate review. See *Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997).

In addition, both parties, including the State, are required to provide us with a complete procedural history of this case. WISCONSIN STAT. RULE 809.19(1)(d) mandates that this court be provided with not only a description of the case, but the procedural status of the case leading up to the appeal, the disposition in the trial court and *the facts relevant to the issues presented*. This fact was completely relevant to the issues presented here yet no one informed us of it.