COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1834-CR **Cir. Ct. No. 99 CM 8379**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT E. CHRISTOPHEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Appeal dismissed in part and orders affirmed.*

¶1 FINE, J. Robert Christophel appeals, *pro se*, from a judgment entered on his guilty pleas convicting him of battery, *see* WIS. STAT. § 940.19(1), and resisting a law-enforcement officer, *see* WIS. STAT. § 946.41(1). The judgment of conviction was signed on February 15, 2000, (the filing stamp of the office of the Milwaukee County Clerk shows a "filing" date of February 12,

2000). Christophel's handwritten notice of appeal indicates that he appeals "from the judgment entered on 12-10-99." (Underlining in original.) Although the sentencing transcript is not in the record, Christophel entered his guilty pleas on November 23, 1999, and the transcript of that proceeding indicates that the matter was adjourned to December 10, 1999, for sentencing. Christophel's notice of appeal was filed in the circuit court on July 5, 2001.

¶2 The trial court sentenced Christophel to two consecutive nine-month terms of incarceration, but stayed the sentences and placed him on probation, subject to various conditions. For a reason that is not clear in the record, Christophel's probation was revoked.

¶3 Appeals from judgments of conviction in misdemeanor cases such as these are governed by the procedure for appeals in felony cases under WIS. STAT. RULE 809.30. WIS. STAT. RULE 809.40(1). The first thing that a defendant must do under RULE 809.30 when he or she seeks to appeal from a judgment of conviction is to comply with WIS. STAT. RULE 809.30(2)(b): "Within 20 days of the date of sentencing, the defendant shall file in the trial court and serve on the district attorney a notice of intent to pursue postconviction relief." According to the appellate record, Christophel did not file a notice of intent to pursue postconviction relief. Thus, we have no jurisdiction over his purported appeal from the judgment of conviction, even if we construe the appeal as being taken from the February, 2000, judgment rather than, as Christophel's notice of appeal designates it, from the oral proceedings that took place on December 10, 1999. *See* ***State v. Hayes***, 167 Wis. 2d 423, 425–426, 481 N.W.2d 699, 700 (Ct. App. 1992).

¶4 A defendant who does not comply with WIS. STAT. RULE 809.30, may still seek review of his or her sentence under WIS. STAT. § 973.19(1)(a) if he or she "within 90 days after the sentence or order is entered, move[s] the court to modify the sentence or the amount of the fine."

¶5 Christophel has filed many postconviction motions in this case, one of which (seeking a modification of the trial court's no-contact order preventing Christophel from having contact with the victim of the battery) was filed on April 6, 2000, and is within ninety days of the judgment of conviction's entry. This motion was denied by the trial court on May 2, 2000. Christophel did not, however, appeal from that denial, and we cannot construe the notice of appeal that he did file as being from that order because appeals from motions brought under WIS. STAT. § 973.19 must be filed no later than ninety days from entry of the order. WIS. STAT. § 973.19(4) ("An appeal from an order determining a motion under sub. (1)(a) is governed by the procedure for civil appeals."); WIS. STAT. § 808.04(1) (civil appeals must be commenced no later than ninety days after entry of order or judgment appealed from).

¶6 The rest of Christophel's motions to modify his sentence were filed after the ninety-day deadline in WIS. STAT. § 973.19(1)(a). They would be timely, however, insofar as they assert either claims of ineffective assistance of counsel or contend that a "new factor" warrants a modification of the sentence. *See* WIS. STAT. § 974.06 (various constitutional or statutory attacks on sentence); ***State v. Krueger***, 119 Wis. 2d 327, 332, 351 N.W.2d 738, 741 (Ct. App. 1984) (new factor). Inasmuch as Christophel is a *pro se* appellant, we will construe his notice of appeal as seeking to appeal from the trial court's denials of his postconviction motions insofar as those motions were cognizable by the trial court either because they asserted that a new factor required a modification of the sentence or raised a

claim of ineffective-assistance of counsel or other alleged constitutional deprivation. We are, however, limited to the issues he has preserved by arguing them in his briefs. *See* ***Reiman Assocs. v. R/A Adver. Inc.***, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (matters not briefed are waived).

¶7 Christophel asserts the following claims in his brief in chief: he claims, without elaboration, that he "'did not understand' what his sentence was, and did not know about having to serve all his time indoors" (internal quotes by Christophel); he claims, without elaboration, that he "was talked into signing his [illegible] revokation [*sic*]"; he claims, without elaboration, that had he "understood about the two, nine month consecutive straight time, he would have plead [*sic*] not guilty by reason of mental defect or disease"; he claims, without elaboration, that "The 14th 6th 18th [later corrected by him to be "8th"] was passed over"; he claims, without elaboration, that his trial lawyer "knew about the long history of mental illness, and the State, and the court but did not bother to check Christophel's competencie [sic] befor [*sic*] plea and sentence where [sic] done or there would have been a different sentence." He seeks to have this court order that he have work-release privileges, concurrent sentences, or "house arrest with the bracelet." In his reply brief, Christophel asserts, again without elaboration: that his "mental illness" is "agorafobia [*sic*]"; that he owes $123 per week in child support; and claims he has been unable to get certain records from either the clerk's office or from the Milwaukee County House of Correction. We address these undeveloped arguments in turn.

¶8 First, it is the general rule that an appellate court will not address or decide arguments that are not sufficiently developed to provide a basis for a decision. ***State v. Pettit***, 171 Wis. 2d 627, 646–647, 492 N.W.2d 633, 642 (Ct. App. 1992). Although we give to *pro se* litigants who are incarcerated some

leeway, ***Waushara County v. Graf***, 166 Wis. 2d 442, 451–452, 480 N.W.2d 16, 19–20 (1992) (pro se brief must state issues, give facts necessary to understand them, and present developed argument), we cannot and will not become their advocate. Second, insofar as Christophel's appellate claims imply that he did not know the consequences of his plea, the transcript of the plea hearing wholly negates that contention. The trial court carefully explained to Christophel that he faced 18 months incarceration, and Christophel, in what appears from the transcript to be crisp direct responses, indicated that he fully understood not only what was going on but also the consequences of his pleas. Christophel has presented nothing that contradicts that, beyond his bare assertions.

¶9 Third, as already indicated, the appellate record is wholly devoid of any reason for the revocation of Christophel's probation, no less containing any evidentiary material supporting Christophel's one phrase assertion that he was "talked into" agreeing to that revocation. We are not a fact-finding court, and we must, accordingly, take the appellate record as it comes to us. ***Pettit***, 171 Wis. 2d at 646, 492 N.W.2d at 642. Fourth, insofar as Christophel claims he was either not competent to plead guilty or that he would have pled not guilty by reason of mental disease or defect, he has, again, presented to us nothing but conclusory statements. This is not enough. *See* ***State v. Bentley***, 201 Wis. 2d 303, 316, 548 N.W.2d 50, 56 (1996) (conclusory allegations without factual support are insufficient to support a finding of prejudice). Moreover, Christophel's hospitalization for mental problems was disclosed by him on the plea questionnaire and waiver-of-rights form that he executed and presented to the trial court. The trial court carefully questioned Christophel about that, and received assurances from Christophel that he fully understood the proceedings.

¶10 Fifth, insofar as Christophel is arguing that his trial lawyer represented him ineffectively, he has not shown what would have been discovered if the lawyer had done what Christophel claims in undeveloped assertions that the lawyer should have done or how that would have changed things. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (to establish ineffective assistance of counsel, defendant must prove two things: (1) that his or her lawyer's performance was deficient, and, if so, (2) that "the deficient performance prejudiced the defense."); ***State v. Flynn***, 190 Wis. 2d 31, 48, 527 N.W.2d 343, 349–350 (Ct. App. 1994) (defendant who alleges that his lawyer was ineffective because the lawyer did not do something, must show with specificity what the lawyer should have done and how that would have either changed things or, at the very least, how that made the result either unreliable or fundamentally unfair).

¶11 Sixth, insofar as Christophel argues that "new factors" require that his sentence be modified, he has neither given us a copy of the sentencing transcript nor has he shown that the matters he raise are either "new" or were important to the trial court's sentencing rationale. *See* ***State v. Macemon***, 113 Wis. 2d 662, 668, 335 N.W.2d 402, 406 (1983) (new factor is fact highly relevant to imposition of sentence but was not known to the sentencing judge either because it did not exist or because defendant unknowingly overlooked it). Christophel's claims of trial court error are without merit.

¶12 Finally, we do not consider Christophel's undeveloped contentions that he was denied access to certain records; he did not first seek relief from the trial court. ***Wirth v. Ehly***, 93 Wis. 2d 433, 443–444, 287 N.W.2d 140, 145–146 (1980) (as a general rule appellate court will not consider matters not first presented to the trial court).

¶13 In sum, we dismiss Christophel's appeal insofar as it is an appeal from the judgment entered in February, 2000, and affirm the orders from which we construe the appeal as having been taken.

By the Court.—Appeal dismissed in part and orders affirmed.

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