COURT OF APPEALS DECISION DATED AND FILED

September 26, 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. 01-2612-CR
01-2613-CR

Cir. Ct. Nos. 96-CF-11
97-CF-36

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS J. MCMANUS,

DEFENDANT-APPELLANT.

APPEALS from a judgment of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Thomas McManus appeals from a judgment of conviction on two felony counts of forgery, as a repeater, and one count of resisting or obstructing an officer. The issues are whether his counsel was

ineffective at sentencing and whether the interstate detainer agreement applies when the defendant has been convicted but not yet sentenced. We affirm.

¶2 McManus first argues that his trial counsel at sentencing was ineffective by not requesting an evaluation of his competency under WIS. STAT. §§ 971.13 and 971.14 (1999-2000).[1] To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A circuit court can properly deny the postconviction motion without a hearing if the defendant presents only "conclusory" allegations, without alleging facts that allow the reviewing court to meaningfully assess his or her claim. ***State v. Bentley***, 201 Wis. 2d 303, 313-14, 548 N.W.2d 50 (1996).

¶3 On appeal, McManus argues that his trial counsel was in possession of letters and medical reports that should have given her reason to seek a determination of his competence because of the "potential" for "lack of comprehension" caused by medications. As the State notes, McManus's postconviction motion alleged that these medications were forced upon him in jail against his will, a claim he does not repeat on appeal. McManus does not tell us where in the record we might find these letters and reports. They are not attached to his postconviction motion, and it appears the circuit court was not aware of them either. We conclude that the motion was properly denied without a hearing. McManus failed to sufficiently allege that counsel had reason to believe McManus actually suffered comprehension problems at sentencing, rather than merely the "potential" for problems. This allegation is also

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

doubtful in light of the transcript of sentencing, which shows McManus lucidly addressing the court in remarks spanning more than seven pages.

¶4 McManus next argues that his convictions should be vacated because the State violated the interstate detainer agreement, WIS. STAT. § 976.05, by filing a detainer against him in Minnesota. He asserts that Minnesota advised, incorrectly in his view, that the agreement did not apply because McManus had already been convicted on the pending charges, though not yet sentenced. In other words, he argues that the agreement did apply, and that his convictions should be vacated because he was not provided with the opportunity to ask for a speedy return to Wisconsin for sentencing. We reject this argument because the detainer agreement does not apply when a defendant has been convicted but not yet sentenced. ***State v. Grzelak***, 215 Wis. 2d 577, 573 N.W.2d 538 (Ct. App. 1997).

By the Court.—Judgment affirmed.

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