

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 9, 2010

David R. Schanker
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. 2009AP1131

Cir. Ct. No. 1983CF6221

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ANDRE VANCE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
M. JOSEPH DONALD, Judge. *Affirmed.*

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

¶1 PER CURIAM. Andre Vance, *pro se*, appeals from an order denying his WIS. STAT. § 974.06 motion, which alleged ineffective assistance of postconviction counsel. We conclude the Record fails to support Vance's claims of error and we therefore affirm the order.

¶2 In February 1984, a jury convicted Vance on two counts each of burglary, second-degree sexual assault, and intimidation of a victim, and one count of criminal trespass to a dwelling. He was sentenced to 103 years' imprisonment. Vance moved for a new trial and for sentence modification; those motions were denied. Vance's attorney filed a notice of appeal, but the appeal was dismissed when counsel failed to file a brief.

¶3 In 1987, Vance retained Catherine M. Canright, Esq., who filed a WIS. STAT. § 974.06 motion. That motion, not contained in the Record, appears to have alleged Fourth, Fifth and Fourteenth Amendment violations. The circuit court denied the motion and this court summarily affirmed the denial. *See State v. Vance*, No. 1987AP899, unpublished slip op. (Nov. 30, 1987).

¶4 On April 13, 2009, Vance filed another WIS. STAT. § 974.06 motion alleging ineffective assistance of postconviction counsel and invoking *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 556 N.W.2d 136 (Ct. App. 1996). Vance asserted Attorney Canright failed to file a postconviction motion alleging that the sentencing court improperly considered a juvenile adjudication at which Vance had been unrepresented by counsel. The circuit court denied the motion. Vance appeals.

¶5 As we have seen, Attorney Canright was not the attorney who represented Vance in proceedings between his conviction and direct appeal of right. Attorney Canright was hired for a collateral attack on Vance's conviction after his direct appeal rights lapsed. No constitutional right to counsel exists for collateral attacks. *See Pennsylvania v. Finley*, 481 U.S. 551, 555–557 (1987); *State ex rel. Payton v. Kolb*, 135 Wis. 2d 202, 207, 400 N.W.2d 285, 287 (Ct. App. 1986) (per curiam). If there is no constitutional right to counsel, a defendant

cannot be deprived of the effective assistance of counsel. *See Wainwright v. Torna*, 455 U.S. 586, 587–588 (1982).

¶6 Even if we considered the ineffective-assistance claim against Attorney Canright, Vance would not prevail because the Record does not support him. Vance claims the sentencing court improperly relied on an uncounseled juvenile adjudication and, thus, Attorney Canright should have brought a motion challenging the 1984 sentence.

¶7 However, the Record contains no transcript of the 1984 sentencing hearing; we must therefore assume the sentencing court’s decision was proper. *See Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26–27, 496 N.W.2d 226, 232 (Ct. App. 1993) (appellant’s obligation to ensure complete Record on appeal; when documents are absent from Record, we assume they support circuit court’s ruling). Consequently, Vance cannot show any sentencing error that Attorney Canright was obligated to challenge, and, if Vance cannot document any error Attorney Canright should have pursued, he cannot show she performed deficiently or that he suffered prejudice. *See State v. Harvey*, 139 Wis. 2d 353, 380, 407 N.W.2d 235, 246–247 (1987) (counsel not ineffective for failing to bring meritless challenges). The circuit court properly denied Vance’s postconviction motion.

By the Court.—Order affirmed.

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

