COURT OF APPEALS
DECISION
DATED AND FILED

March 13, 2003

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. 02-1158 **Cir. Ct. No. 97-CF-140**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NATHANIEL A. LINDELL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: JOHN J. PERLICH, Judge. *Affirmed.*

Before Dykman, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Nathaniel Lindell appeals an order denying his motion for reconsideration of an order which denied his motion for postconviction

relief under WIS. STAT. § 974.06 (2001-02).[1] Lindell claims that the trial court was biased against him; that the trial court erred in denying his motion without a hearing; that the trial court erred in refusing to sanction the district attorney and award Lindell costs; and that the trial court erred in refusing to provide Lindell photocopies of certain documents without charge. For the reasons discussed below, we disagree and affirm.

Alleged Bias of Judge

¶2 Lindell contends the trial court revealed that it was biased against him by: (1) denying his motion after only four days; (2) failing to separately address each of Lindell's claims; and (3) refusing to set aside a restitution order which was entered after the trial court initially denied restitution at the sentencing hearing. We are not persuaded, however, that any of Lindell's complaints show that the trial court had any personal bias against him.

¶3 First of all, we are satisfied that four days is sufficient time for a trial court to review claims in a case with which it is already familiar. Second, the order denying Lindell's motion indicated that the motion raised "issues already ruled upon." Although Lindell is correct that the exercise of discretion requires an explanation of the court's reasons, it is not necessary that the trial court repeat explanations it has already offered elsewhere in the record.

¶4 With regard to the restitution order, Lindell points to a letter from the court asking the district attorney to address whether the restitution order "was

[1] Because the notice of appeal was filed within the time to appeal from the initial order denying the postconviction motion, we have jurisdiction to review both orders. All further references to the Wisconsin Statutes in this opinion are to the 2001-02 version.

signed by mistake, in which case the order should be voided, or if something happened after sentencing which resulted in the restitution order." The State responded that the order had been entered in error, but had already been voided. Therefore, it was not necessary for the trial court to take any further action to remedy the situation; it remained only for the DOC to update its files.

¶5 In sum, we see no evidence that the trial court rendered its decision on Lindell's postconviction motion based on anything other than its view of the merits of the issues.

Necessity for a Hearing

¶6 Lindell maintains that the trial court was required to conduct an evidentiary hearing to resolve his claims that: (1) counsel may have lacked a strategic reason for failing to raise certain claims on appeal; (2) some of the jurors may have been biased or may have lied during voir dire; (3) state witnesses may have been coerced into providing damaging testimony; (4) trial counsel may have had a conflict of interest; (5) the D.A. may have maliciously prosecuted Lindell for asserting his right to remain silent, and (6) the author of the PSI may have been biased.

¶7 It is true that a defendant must be given an evidentiary hearing when he alleges facts which, if true, would entitle him to relief. ***State v. Bentley***, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996). No hearing is required, however, when the defendant presents only conclusory allegations or the allegations fail to raise a question of fact, or the record conclusively demonstrates that the defendant is not entitled to relief. ***State v. Hampton***, 2002 WI App 293, ¶22, __ Wis. 2d __, 655 N.W.2d 131, *review granted*, (Wis. Feb. 19, 2003) (No. 01-0509-CR).

¶8 Here Lindell has failed to allege specific facts which would support his various claims of ineffective assistance, bias, and malicious prosecution. To the contrary, he claims that a hearing is necessary to determine "if" or "[w]hether or not" any of his hypotheses are true, without providing any factual basis to believe that they are. The trial court is not required to hold an evidentiary hearing merely to allow the defendant to conduct a "fishing expedition" of this nature. ***Id***.

¶9 Because Lindell's motion failed to allege facts sufficient to warrant a hearing, we need not address whether his motion was untimely or otherwise procedurally barred.

Sanctions, Costs and Photocopies

¶10 Finally, Lindell's contentions that the trial court should have sanctioned the district attorney, awarded Lindell costs, and provided him free photocopies of certain documents were not properly before the trial court because WIS. STAT. § 974.06 is limited to claims which are constitutional or jurisdictional in nature.

By the Court.—Order affirmed.

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