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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT II**

September 27, 2023

To:

Hon. Anthony G. Milisauskas  
Circuit Court Judge  
Electronic Notice

Rebecca Matoska-Mentink  
Clerk of Circuit Court  
Kenosha County Courthouse  
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Lisa E.F. Kumfer  
Electronic Notice

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Electronic Notice

Daniel Gonzalez  
Wisconsin Secure Program Facility  
P.O. Box 1000  
Boscobel, WI 53805-1000

You are hereby notified that the Court has entered the following opinion and order:

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2022AP2033

State of Wisconsin v. Daniel Gonzalez (L.C. #2009CF888)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Daniel Gonzalez, appearing pro se, appeals from orders denying three motions: (1) a motion to vacate his judgment of conviction; (2) a motion to modify his sentence; and (3) a motion for appointment of counsel.<sup>1</sup> Based upon our review of the briefs and record, we

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<sup>1</sup> Gonzalez's notice of appeal refers to "decisions and Order entered [by the circuit court] on October 24, 2022." The circuit court entered an order denying his request for appointment of counsel on October 24 and a separate order denying the motion to vacate and motion to modify sentence on October 25. Because the notice of appeal refers to "decisions," we will liberally construe it to encompass both orders.

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>2</sup> We affirm.

In 2011, Gonzalez pled no contest to one count of felony murder, which the judgment of conviction identified as a class C felony, and one count of first-degree reckless injury with use of a dangerous weapon, both counts as party to a crime and as a repeater. Gonzalez received consecutive sentences of forty years of initial confinement and ten years of extended supervision on the felony murder count and fifteen years of initial confinement followed by ten years of extended supervision on the reckless injury count. On direct appeal, Gonzalez’s counsel filed a no-merit report and Gonzalez filed a response challenging both the conviction and sentence. We concluded that no issue he could raise on appeal had arguable merit and summarily affirmed the judgment of conviction. *State v. Gonzalez*, No. 2012AP2259-CRNM, unpublished op. and order (WI App Nov. 19, 2013), *review denied* (WI June 12, 2014) (No. 2012AP2259-CRNM). After Gonzalez’s direct appeal ended, the circuit court entered an amended judgment of conviction, per a request from the Department of Corrections, to clarify that the felony murder count was an unclassified felony, not a class C felony as identified on the original judgment of conviction.

In May 2022, Gonzalez filed a “Motion to Recall/Vacate the Judgment of Convictions,” arguing that the circuit court lacked jurisdiction over him or the offenses with which he was charged and that his conviction was obtained by fraud. Two months later, Gonzalez filed what he described as a “second post-conviction motion” seeking a reduction in his sentence on the ground that the sentencing court “considered erroneous factors” and “gave too much weight to

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

the gravity of the offenses and too little weight to the character of the defendant and the need (or lack thereof) to protect the public.” Then, on October 17, 2022, Gonzalez filed a request for appointment of counsel. The court held a hearing on October 24 at which it denied all of Gonzalez’s motions. Both of the orders entered after the hearing refer back to the reasons stated by the court on the record at the hearing; neither sets forth any of the reasoning underlying the court’s decisions.

On appeal, Gonzalez argues that the circuit court erred in denying his motions. His arguments are difficult to decipher, but with respect to his jurisdictional motion, Gonzalez appears to contend that the court denied him “his basic right to be heard in a meaningful manner” by not liberally construing his motion. Gonzalez also contends that the circuit court “did not apply the correct legal standards with respect to modification of [his allegedly] illegal sentence.” This argument appears to be grounded in the entry of the amended judgment of conviction after the Department of Corrections sought clarification as to the classification of the felony murder charge. Gonzalez seemingly contends that because the initial judgment of conviction improperly identified that charge as a class C felony, that judgment was void. Finally, he argues that the court erred in “[r]efusing to [c]onsider” WIS. STAT. § 939.73, which states that “[a] penalty for the commission of a crime may be imposed only after the actor has been duly convicted in a court of competent jurisdiction.”

We conclude that Gonzalez has not established that the circuit court erred in denying his motions. Initially, we note that Gonzalez’s briefs do not comply with several rules of appellate procedure. Parties must support their legal arguments “with citations to the authorities, statutes *and parts of the record.*” WIS. STAT. RULE 809.19(1)(e) (emphasis added). In addition, parties must develop their arguments by applying the legal authorities they cite to the facts of the case.

Although Gonzalez is representing himself in this appeal, his briefs must still comply with these procedural requirements. *See Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). It is not our responsibility to develop arguments for a party, and we are not required to address arguments that are undeveloped or not supported by citations to the record. *See Doe I v. Madison Metro. Sch. Dist.*, 2022 WI 65, ¶35, 403 Wis. 2d 369, 976 N.W.2d 584 (stating that appellate courts “do not step out of [their] neutral role to develop or construct arguments for parties” (citation omitted)); *Madely v. RadioShack Corp.*, 2007 WI App 244, ¶14 n.7, 306 Wis. 2d 312, 742 N.W.2d 559 (stating that “we have no duty to scour the record to review arguments unaccompanied by adequate record citations”).

Gonzalez’s briefs do not comply with these rules. His arguments lack citations to the record and are peppered with citations to legal authorities that appear to have little, if any, relevance to the issues he raises. Gonzalez does not explain the relevance of these authorities or apply them to the facts in this case. For these reasons alone, Gonzalez has not carried his burden of showing that the circuit court erred. *See Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381.

In addition, the record on appeal does not include a transcript of the October 24, 2022 hearing at which the circuit court set forth its reasons for denying Gonzalez’s motions. As the appellant, it was Gonzalez’s responsibility to make sure the transcript was included in the record. *See* WIS. STAT. RULE 809.11(4)(a) (“The appellant shall request a copy of the transcript of the court reporter’s verbatim record of the proceedings for each of the parties to the appeal and make arrangements to pay for the transcript and copies within 14 days after the filing of the notice of appeal.”); *Gaethke*, 376 Wis. 2d 448, ¶36. “[I]n the absence of a transcript we presume that

every fact essential to sustain the circuit court’s decision is supported by the record.” *Butcher v. Ameritech Corp.*, 2007 WI App 5, ¶35, 298 Wis. 2d 468, 727 N.W.2d 546 (2006).

In his reply brief, Gonzalez argues that he is indigent and that the circuit court denied him access to the transcript.<sup>3</sup> WISCONSIN STAT. § 814.29(1m) sets forth a procedure whereby a prisoner may request leave to pursue an appeal “without being required to prepay the fees or costs,” including those associated with preparation of transcripts. See *State ex rel. Akbar v. Kronzer*, 2004 WI App 108, ¶3, 273 Wis. 2d 749, 681 N.W.2d 280 (stating that “the phrase ‘costs and fees’ used in § 814.29(1m) ... include[s] the costs and fees for preparing transcripts”).

Gonzalez does not argue that he complied with this procedure, and our independent review of the record does not convince us that he did so. Gonzalez filed a motion with the circuit court in November 2022 seeking “access to the transcripts” on grounds of indigence, arguing that they were “necessary for appeal purposes to describe the court’s handling of proceedings.” It is not clear from the record whether the circuit court ruled on this motion. However, in March 2023, Gonzalez reversed course and filed a statement on transcript in which he stated that “[a] copy of transcripts are not necessary for prosecution[] of this appeal.” Having elected to proceed without a transcript, Gonzalez cannot carry his burden of demonstrating error by the circuit court. The absence of the transcript precludes us from evaluating the court’s reasons for denying his motions. This is a second, independent basis on which we reject Gonzalez’s arguments.

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<sup>3</sup> Gonzalez claims that the circuit court’s decision to deny him the transcript is part of a “custom and practice” of that court with respect to indigent incarcerated litigants such as himself. This conclusory accusation is not supported by any citation to record evidence. We reject it without further discussion.

For these reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*