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**DISTRICT IV**

September 12, 2013

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

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2011AP985

State of Wisconsin v. William A. Reese (L.C. # 2007CF196)

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

William Reese appeals an order that denied his postconviction motions “for appointment of counsel” and “for transcripts and access to preexisting records.”<sup>1</sup> After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).<sup>2</sup> We affirm.

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<sup>1</sup> Reese also makes multiple references in his brief to another postconviction motion that he filed, seeking relief from his judgment of conviction on the grounds of ineffective assistance of counsel under WIS. STAT. § 974.06. That motion is not before us in this appeal, however, because it was filed after the notice of appeal, and the record does not include any order deciding the motion.

<sup>2</sup> All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Reese was convicted of a fifth or subsequent offense of operating a motor vehicle while under the influence of an intoxicant (OWI-5+) based upon a plea of no contest, and the circuit court imposed a bifurcated prison sentence. Reese did not file a notice of intent to seek postconviction relief or any other postconviction motions during his period of initial incarceration.

After Reese's extended supervision was revoked, he filed the present motions seeking the appointment of counsel and a complete copy of all transcripts, as well as access to all preexisting files and records in the control of the clerk of the circuit court. As the grounds for these motions, Reese asserted that he now intended to pursue an appeal and/or a postconviction motion under WIS. STAT. § 974.06, and that he had never previously been provided any transcripts or discovery. The circuit court concluded that Reese's motions did not allege any facts that would entitle him to the relief requested. We agree.

First, the constitutional due process right to have counsel appointed in a criminal case "extends to the first appeal of right, and no further." *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). Reese's time to file an appeal as of right expired when he failed to file a notice of intent to seek postconviction relief within twenty days after his original judgment of conviction. WIS. STAT. RULE 809.30(2)(b). There is no right to counsel for appeals from postconviction motions under WIS. STAT. § 974.06. *State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 648-49, 579 N.W.2d 698 (1998); *see also* WIS. STAT. § 974.06(6) (motions raising collateral attacks on a criminal conviction under § 974.06 are treated as civil matters).

Similarly, the time to order transcripts and copies of the circuit court record as a matter of right for a direct appeal is within thirty days after filing a timely notice of intent to seek

postconviction relief. WIS. STAT. RULE 809.30(2)(f). Because Reese is not proceeding under RULE 809.30, his request for transcripts falls within WIS. STAT. § 973.08. Under that statutory section, a circuit court has discretion to order that transcripts be delivered to a prisoner when the prisoner has shown an adequate reason for requesting them. *State v. Wilson*, 170 Wis. 2d 720, 723, 490 824 N.W.2d 48 (Ct. App. 1992). It was a reasonable exercise of discretion for the circuit court to conclude that Reese had failed to show an adequate reason for his request for transcripts when his motion provided no explanation as to what postconviction issue(s) he planned to raise. We further note that nothing in the circuit court's order prevented Reese from making his own arrangements to have the court reporter produce the transcripts.

Finally, as to Reese's request for access to "preexisting records," it appears that he may be referring to discovery materials relating to his number of prior convictions. If such documents were not filed in the circuit court during the original proceedings, there is no reason to believe that they would have been in the possession of the clerk of the circuit court when the court made the ruling that is the subject of this appeal.<sup>3</sup> Nor has Reese cited any authority that would authorize the circuit court to order additional discovery from the State in the postconviction posture of this case. If Reese is referring to materials that were turned over to the defense prior to the entry of his plea, he should direct his request to defense counsel.

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<sup>3</sup> We note that Reese attached a certified copy of his DOT driving record to his § 974.06 motion, but as we have already explained, that motion is not before us on this appeal.

IT IS ORDERED that the order denying Reese's requests for the appointment of counsel, transcripts and access to preexisting records is summarily affirmed under WIS. STAT. RULE 809.21(1).

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*