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September 13, 2013

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

2012AP723

State of Wisconsin v. Cesar Flores-Ramirez (L.C. # 2002CF880)

Before Lundsten, Sherman and Kloppenburg, JJ.

Cesar Flores-Ramirez appeals an order that denied his postconviction motion to have his direct appeal rights reinstated based upon the failure of either trial or appellate counsel to challenge the adequacy of the Spanish translation services provided at Flores-Ramirez's trial in 2003, despite Flores-Ramirez's complaints to both attorneys about the translator. Flores-Ramirez attached materials to his motion showing that, in the years subsequent to the trial, the translator failed oral certification tests on multiple occasions and was the subject of an administrative bulletin declaring the translator ineligible for state compensation for his services as of November 2010.

On this appeal, Flores-Ramirez contends that the hearing on his motion was flawed because the circuit court failed to execute a subpoena or obtain the telephonic testimony of appellate counsel and an expert witness on the translator certification process. Based upon these alleged errors at his hearing, Flores-Ramirez now asks this court to reinstate his direct appeal rights. 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).¹ We affirm.

We begin by noting that the relief Flores-Ramirez is seeking would not be available in the procedural posture of this appeal. If Flores-Ramirez were able to establish a prejudicial due process violation at his hearing, the remedy would be to remand for a new motion hearing, not to reinstate his direct appeal rights.

We next observe that Flores-Ramirez's brief fails to develop any coherent arguments that link the legal authorities he cites for general propositions about the requirements of due process with the specific prejudice he alleges to have suffered in this case as a result of the lack of witnesses at his motion hearing or, for that matter, the translator's services at trial. Contrary to Flores-Ramirez's unsupported assertions that prejudice can be assumed on each of his alleged errors, it is well established that most constitutional errors, including due process violations, are subject to the harmless error test. *See State v. Martin*, 2012 WI 96, ¶44, 343 Wis. 2d 278, 816 N.W.2d 270; *State v. Kramer*, 2006 WI App 133, ¶26, 294 Wis. 2d 780, 720 N.W.2d 459.

An error can be deemed harmless or nonprejudicial in a criminal case when “it appears beyond a reasonable doubt that the error complained of did not contribute” to the result of the

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

proceeding. See *Hannemann v. Boyson*, 2005 WI 94, ¶57, 282 Wis. 2d 664, 698 N.W.2d 714 (quoted source and internal quotation marks omitted). An error cannot be said to have contributed to the result of the proceeding if it is clear that a rational fact finder would have reached the same result absent the error. See *id.*

Here, Flores-Ramirez has not even attempted to explain why the disposition of his motion would have been different had appellate counsel or an expert witness appeared at the postconviction hearing, or why the outcome of his trial would have been different with a different translator. Most significantly, he has not provided any affidavit from counsel or an expert alleging what testimony they could have provided at the hearing, nor has he identified a single mistranslation made by the translator at the trial, much less shown what additional assistance he would have been able to render to his defense based on some other translation that would have resulted in a different verdict.

This court need not consider arguments that are unsupported by adequate factual and legal citations or that are otherwise undeveloped. See WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for briefs); *Grothe v. Valley Coatings, Inc.*, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463 (regarding citation to record); *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (regarding undeveloped arguments). While we will make some allowances for the failings of pro se briefs, “[w]e cannot serve as both advocate and judge,” and will not scour the record to develop viable, fact-supported legal theories on the appellant’s behalf. See *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999); see also *Pettit*, 171 Wis. 2d at 647.

Based upon Flores-Ramirez’s failure to develop any argument on prejudice,

IT IS ORDERED that the order denying Flores-Ramirez's postconviction motion is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals