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DISTRICT II

October 16, 2013

To:

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

| | |
|-----------|--|
| 2013AP380 | State of Wisconsin v. Bryan Steven Miller (L.C. #2008CF1524) |
| 2013AP381 | State of Wisconsin v. Bryan Steven Miller (L.C. #2009CF233) |

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Bryan Steven Miller appeals pro se from an order denying his WIS. STAT. § 974.06 (2011-12) motion for postconviction relief alleging ineffective assistance of counsel.¹ Based on our review of the briefs and the record, we conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21. We affirm the order.

¹ By this court's order dated May 29, 2013, these cases were consolidated for briefing and disposition.

This appeal is a consolidation of two Racine county cases. Miller entered guilty pleas to disorderly conduct and felony bail jumping in case number 08CF1524, stemming from allegations that he peeped on a female at a tanning salon, and to criminal damage to property and felony bail jumping in case number 09CF233, stemming from allegations that he committed a residential burglary and later followed at a department store a woman he stalked in the past. Six other counts were dismissed and read in for sentencing. Miller filed a postconviction motion alleging that his defense counsel was ineffective. The trial court denied his motion after a hearing. This appeal followed.

Miller contends his defense counsel was ineffective for failing to move to suppress, dismiss, or investigate the charges against him. Miller's claim fails on more than one ground.

For one, Miller merely asserts in conclusory fashion that his counsel rendered ineffective assistance. We generally do not address undeveloped arguments. *State v. Gracia*, 2013 WI 15, ¶28 n.13, 345 Wis. 2d 488, 826 N.W.2d 87.

For another, Miller does not include the transcript of the hearing at which the trial court orally denied his postconviction motion. Indeed, he represents in his statement on transcript that a transcript was unnecessary to prosecute the appeal. It is the appellant's responsibility to ensure that the appellate record is complete and, if it is incomplete in connection with an issue he or she raises, "we must assume that the missing material supports the trial court's ruling." *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993).

Thirdly, Miller's guilty pleas waived any claim of ineffective assistance of counsel relative to events occurring prior to and unrelated to his pleas. See *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); see also *State v. Pohlhammer*, 82 Wis. 2d 1, 4, 260 N.W.2d 678 (1978).

Rather, he may attack only the voluntary and intelligent character of the guilty plea. *Tollett*, 411 U.S. at 267; *Pohlhammer*, 82 Wis. 2d at 4. Miller has not done so.

Miller next asserts that he should not have been charged with disorderly conduct in either underlying case and that the State did not prove the elements of disorderly conduct beyond a reasonable doubt. He contends the State “could have” charged him with a Class A misdemeanor under the “peeping Tom” statute, WIS. STAT. § 942.08, rather than with disorderly conduct, a Class B misdemeanor. If an act forms the basis for a crime punishable under more than one statutory provision, prosecution may proceed under any or all such provisions. WIS. STAT. § 939.65; *see also State v. Karpinski*, 92 Wis. 2d 599, 611, 285 N.W.2d 729 (1979).

Also, whether conduct can be considered “disorderly” depends on the conduct and circumstances of the particular case. *State v. Schwebke*, 2002 WI 55, ¶24, 253 Wis. 2d 1, 644 N.W.2d 666. In case number 08CF1524, a woman discovered Miller spying on her as she tanned in the nude during her twenty-minute session at a tanning salon. “Disorderly conduct” includes indecent behavior in a public place. WIS. STAT. § 947.01. Miller admitted to the elements of disorderly conduct when he entered his guilty plea. *See State v. Rachwal*, 159 Wis. 2d 494, 509, 465 N.W.2d 490 (1991). In case number 09CF233, the disorderly conduct charge was dismissed and read in for sentencing. Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals