



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT I

November 15, 2013

To:

Hon. Dennis P. Moroney
Circuit Court Judge
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Karen A. Loebel
Asst. District Attorney
821 W. State St.
Milwaukee, WI 53233

Nancy A. Noet
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Sylvester Thomas
Sand Ridge Secure Treatment Center
P.O. Box 800
Mauston, WI 53948

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

2012AP2765

State of Wisconsin v. Sylvester Thomas
(L.C. # 2007CI11)

Before Curley, P.J., Fine and Kessler, JJ.

Sylvester Thomas, *pro se*, appeals from an order committing him as a sexually violent person under WIS. STAT. ch. 980 (2011-12),¹ and from an order denying his *pro se* motion for post-commitment relief.² Upon our review of the briefs, we conclude at conference that this

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

² Thomas was represented by counsel at the commitment trial, but he chose to proceed *pro se* to file a post-commitment motion and this appeal.

matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1). We summarily affirm the orders.

In October 2007, the State filed a petition to have Thomas committed as a sexually violent person. The petition referenced Thomas's April 1992 Wisconsin conviction for third-degree sexual assault, as well as his December 2002 convictions in Arkansas for second-degree sexual assault, second-degree battery, and criminal trespass. The Arkansas crimes were committed while Thomas was in absconder status from his probation in Wisconsin. Thomas was ultimately returned to Wisconsin, where he served several periods of incarceration in between periods of release to the community. As of October 2007, he was incarcerated and the State filed the petition shortly before Thomas's mandatory release date.

The case did not proceed to a jury trial until October 10-11, 2012, based in part on numerous evaluations, changes of trial counsel, and Thomas's *pro se* filings in the trial court, court of appeals, and supreme court.

The jury found that Thomas was a sexually violent person as alleged in the petition. The trial court ordered Thomas committed to institutional care in a secure mental health facility, under the care of the Department of Health Services.

Thomas filed a *pro se* motion for post-commitment relief. He appeared to raise several issues, although they were difficult to comprehend. He asserted that he would not have pled guilty in 1992 if he had known that he would later be subject to commitment under WIS. STAT. ch. 980. He also argued that the transcript of the October 2012 jury trial "will speak for itself of the violations of a[] malicious motive to [w]ronful[ly] civil[ly] commit" Thomas. Thomas also asserted that the State "intentionally denied [Thomas] a[] defense expert psychologist for his

defense in trial,” which demonstrated a “malicious motive.” In addition, Thomas argued that his trial counsel was ineffective “due to conflict of interests” and that he performed deficiently. Thomas suggested that his trial counsel and the State engaged in “[o]utright deception” and “plotting and scheming” when they held a status conference without Thomas present. Thomas’s motion said that the “trial court record and jury trial transcript” would “speak for it-self of fabricated evidence through plotting and scheming” and the introduction of “misleading information.” Finally, Thomas suggested that there was insufficient evidence that he cannot control his sexual behavior or is a risk to the community.

The trial court denied the post-commitment motion in a written order, stating that after reviewing the claims set out in the motion, the trial court had concluded that “they do not set forth any meritorious claims for relief.”³ This appeal follows.

Thomas’s appellate brief repeats many of the allegations from his post-commitment motion and also suffers from the same deficiencies as his post-commitment motion. Thomas has essentially submitted a laundry list of allegations and case citations that are difficult to understand and which lack adequate argument and support. For instance, he states, *verbatim*:

This act is [Malicious Prosecution] by Milwaukee County
Circuit Court System that ‘Occurred’ on Oct. 10 & 11, 2012.

³ In that same order, the trial court also noted that Thomas had notified both the public defender’s office and the trial court that he did not want representation and would proceed *pro se*. The trial court granted Thomas’s request for trial transcripts and ordered the production of transcripts for five days of proceedings, including the trial.

When the appellate record was transmitted to this court, it did not include one transcript from the trial. While it was Thomas’s responsibility to ensure that the record was complete on appeal, *see State v. Holmgren*, 229 Wis. 2d 358, 362 n.2, 599 N.W.2d 876 (Ct. App. 1999), this court nonetheless issued an order that led to the transmittal of the missing trial transcript, which is now part of the appellate record.

The state prosecutor ask for Dr. Lodl, due to his defective 2008 report, this act is malicious motive which will denied the defendant to a fair trial. review 8/29/11 transcripts.

(Bracketing in original.) He also complains that the prosecutor “engaged in a pervasive petition [sic] of inapp[ro]priate questions, [c]omments and argument throughout the entire trial, each one building on the next, to such a degree as to unde[r]mine fairness of the trial proceeding.” Finally, Thomas’s brief contains bald references to legal authority, but he does not adequately integrate that authority into discernible legal arguments.

In its response brief, the State argued that Thomas’s brief “falls well below” the minimum standards required for a *pro se* litigant’s brief, which are that the brief must “state the issues, provide the facts necessary to understand them, and present an argument on the issues.” See *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992) (citation omitted). The State argued that this court should affirm because Thomas has not presented any issues of merit and has failed to adequately brief his arguments. Thomas’s reply brief does not address the State’s concerns. Rather, Thomas’s reply brief again makes assertions such as: the State made inappropriate arguments at trial and the verdict was based on “false and misleading information.” There are no references to the trial transcript and this court cannot meaningfully evaluate Thomas’s arguments.

We conclude that Thomas’s appellate brief and reply brief are grossly inadequate. They lack citations to the appellate record and an adequate explanation of Thomas’s challenges to the proceedings. This court will not abandon its neutrality to develop arguments for a litigant. See *State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). We cannot, as Thomas suggests, review the transcripts, select pertinent testimony, and develop arguments for Thomas. See *id.* Further, this court will not decide issues that are not, or are inadequately, briefed. See

State v. Pettit, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (appellate court may decline to address issues that are inadequately briefed; arguments that are not supported by legal authority will not be considered); *W. H. Pugh Coal Co. v. State*, 157 Wis. 2d 620, 634, 460 N.W.2d 787 (Ct. App. 1990) (an appellate court may decline to consider issue that is undeveloped in the briefs or that is not supported by citation to legal authority); *Lechner v. Scharrer*, 145 Wis. 2d 667, 676, 429 N.W.2d 491 (Ct. App. 1988) (court need not consider arguments unsupported by references to the record). Based on Thomas's inadequate briefs, we summarily affirm the orders without further discussion.

Therefore,

IT IS ORDERED that the orders are summarily affirmed. See WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals