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January 10, 2014

To:

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

2012AP1499-CR

State of Wisconsin v. Jason A. Evans (L.C. # 2009CF467)

Before Lundsten, Higginbotham and Sherman, JJ.

Jason Evans appeals an order allowing his appointed postconviction attorney to withdraw. Based upon our review of 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.

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

Appointed counsel for Evans filed a motion to withdraw. Circuit court docket entries show that the court held a hearing on the motion on June 6, 2012. The court signed an order granting the withdrawal motion that day. The State asserts that the order is nonfinal. If true, that would mean Evans cannot appeal as a matter of right. *See* WIS. STAT. § 808.03(1). However, we regard the order as final. We consider a motion for counsel to withdraw under WIS. STAT. RULE 809.30(4) to be a special proceeding, because it does not address the merits of the criminal case itself, but only issues about counsel. Accordingly, an order disposing of a motion to withdraw is a final order in a special proceeding, and may be appealed as a matter of right.

Evans argues that the court erred by granting counsel's motion to withdraw over his objection. Evans has not provided a transcript of the hearing. The circuit court docket entry confirms that Evans opposed the motion. However, it does not state the reason for his opposition, or what the court said in response to that opposition. The paper order also does not address these points. Without a transcript or other official source of what occurred at that hearing, we are unable to determine whether the circuit court erred. When the transcript is not part of the record, we assume it supports every fact essential to the trial court decision. *See Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (1979). Therefore, we must affirm the circuit court's order on this basis.

In Evans' notice of appeal, he asked that we stay his time to file a postconviction motion or notice of appeal from the judgment of conviction. We did so in our order of July 19, 2012. Therefore, we now set a new postconviction filing date. Although the parties' briefs addressed various issues about the possible merits of an appeal from the judgment, we need not discuss those issues because this appeal is only from the order allowing counsel to withdraw.

IT IS ORDERED that the June 6, 2012, order appealed is summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that the time for the defendant to file a postconviction motion or notice of appeal is extended to sixty days from the date of this order.

Diane M. Fremgen
Clerk of Court of Appeals