



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 IV

January 14, 2014

To:

Hon. Richard G. Niess
Circuit Court Judge
215 South Hamilton, Br 9, Rm 5103
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Thomas J. Balistreri
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Paul W. Humphrey
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

Chad A. Stites
P.O. Box 6111
Madison, WI 53716

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

2012AP2130-CR

State of Wisconsin v. Chad A. Stites (L.C. # 2003CF424)

Before Lundsten, Higginbotham and Kloppenburg, JJ.

Chad Stites appeals orders denying his motion to modify restitution and sentence and his motion to modify sentence. 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.

Stites first argues that the court erred in setting restitution in 2003. He argues that the court erred by ordering him to pay restitution to an insurer without a finding that it would be in

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

the interest of justice, contrary to WIS. STAT. § 973.20(5)(d). However, he provides no factual support for the proposition that he was ordered to pay an insurer. None of the names on the restitution order are readily identifiable as an insurer. Stites argues that banks have insurance for this type of loss, and he cites case law in support of that assertion. However, case law about other banks does not establish as fact that Stites was ordered to pay restitution to an insurer.

Stites next argues that his trial counsel was ineffective by failing to litigate Stites' ability to pay restitution. However, Stites has not presented any reason to believe that he lacked ability to pay at that time, and therefore he has not shown that his attorney's conduct caused him prejudice. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense).

Finally, Stites argues that the court erroneously exercised its discretion in sentencing him to five years of initial confinement and five years of extended supervision in 2003. Stites' time to appeal from that sentence is long expired under WIS. STAT. RULE 809.30. Nor does Stites appear to be claiming that there is a new factor supporting modification of the sentence. Therefore, Stites has not shown a legal basis to review the sentence further.

IT IS ORDERED that the orders appealed are summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals