



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

December 12, 2014

To:

Hon. Julie Genovese
Circuit Court Judge
Br. 13, Rm. 8103
215 South Hamilton
Madison, WI 53703

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

Michael E. Covey
Covey Law Office
P. O. Box 1771
Madison, WI 53701-1771

Robert Probst
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Corey C. Stephan
Asst. District Attorney
Rm. 3000
215 South Hamilton
Madison, WI 53703

James A. Jones 467605
Winnebago Corr. Center
P.O. Box 219
Winnebago, WI 54985-0219

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

2013AP1732-CR

State of Wisconsin v. James A. Jones (L.C. # 2009CF1064)

Before Lundsten, Sherman and Kloppenburg, JJ.

James Jones appeals a judgment of conviction and an order denying his postconviction motion. 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.

Jones argues that his due process right to have a neutral and unbiased presentence investigation (PSI) report was violated because the author of the report in this case had, within

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

the preceding year, initiated and prosecuted a revocation hearing against Jones. We conclude that Jones forfeited this issue because Jones did not raise it before or at sentencing. Jones would have known the identity of the PSI author when Jones received the report. The fact of the author's involvement in the earlier revocation would also have been known or discoverable. Because Jones had an opportunity to make this objection but did not object, we conclude the issue was forfeited.

Jones next argues that his trial counsel was ineffective by not objecting to this agent being the author of the PSI report. We conclude that counsel was not ineffective. As Jones himself acknowledges, the issue of PSI author bias based on prior involvement in revocation is a new one. However, counsel's performance is normally not held deficient for failing to argue a point of law that is unclear or unsettled. *State v. Maloney*, 2005 WI 74, ¶¶23-30, 281 Wis. 2d 595, 698 N.W.2d 583. We see nothing that distinguishes Jones' situation from this general rule. In reaching this conclusion, we do not express or imply any opinion about what the proper analysis of the PSI author bias issue would be; we merely note that it is one that is not clear or settled.

IT IS ORDERED that the judgment and order appealed from are summarily affirmed under WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals