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 II/IV

November 6, 2015

To:

Hon. Michael O. Bohren
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Madden
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Kathleen A. Lindgren
Lakeland Law Firm LLC
N27 W23957 Paul Rd., Ste. 206
Pewaukee, WI 53072

Anne Christenson Murphy
Assistant Attorney General
P. O. Box 7857
Madison, WI 53707-7857

Susan Lee Opper
District Attorney
515 W. Moreland Blvd. Rm. G-72
Waukesha, WI 53188-2486

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

2014AP2312-CR State of Wisconsin v. Shane M. Wondrachek (L.C. # 2012CF1448)
2014AP2313-CR State of Wisconsin v. Shane M. Wondrachek (L.C. # 2013CF181)

Before Kloppenburg, P.J., Higginbotham and Sherman, JJ.

Shane Wondrachek appeals judgments in two companion cases convicting him of two counts of misappropriating identification and one count of felony bail jumping, as well as an order denying his postconviction motion for resentencing. The sole issue on appeal is whether Wondrachek was entitled to an evidentiary hearing on his claim that trial counsel provided ineffective assistance at the sentencing hearing. After reviewing the record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We affirm.

In order to obtain a hearing on a postconviction motion, a defendant must allege material facts sufficient to warrant the relief sought. ***State v. Allen***, 2004 WI 106, ¶¶9, 36, 274 Wis. 2d 568, 682 N.W.2d 433. In the context of a claim of ineffective assistance of counsel, that means the facts alleged would, if true, establish both that counsel provided deficient performance and that the defendant was prejudiced by that performance. ***State v. Swinson***, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12. No hearing is required, though, when the defendant presents only conclusory allegations or when the record conclusively demonstrates that he or she is not entitled to relief. ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972). Non-conclusory allegations should present the "who, what, where, when, why, and how" with sufficient particularity for the court to meaningfully assess the claim. ***Allen***, 274 Wis. 2d 568, ¶23.

Here, Wondrachek alleged that trial counsel provided ineffective assistance when he responded to a notation on a face sheet in the presentence report indicating that Wondrachek had a "white pride" tattoo by informing the court that, during the course of counsel's representation, Wondrachek had exhibited a "sea change" in his view of being represented by a black attorney. Counsel then argued that Wondrachek's "work" on that "issue" should be taken into account as a positive aspect of his character when considering whether to sentence Wondrachek to conditional jail time rather than prison.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Wondrachek contends that counsel's comments infringed upon his First Amendment rights by advising the court of his beliefs that were unrelated to the crimes of conviction. *See generally* ***Dawson v. Delaware***, 503 U.S. 159 (1992). We do not need to address whether counsel's comments fell afoul of ***Dawson***, however, because Wondrachek has not shown that they had any effect on his sentence.

The circuit court made no mention of Wondrachek's tattoo, his views on any racial issues, or his relationship with counsel when addressing Wondrachek's character. Instead, the court began by noting that Wondrachek had, in many ways, defined himself through the criminal justice system. The court went on to discuss Wondrachek's criminal history at length, noting that some of his prior offenses were related to alcohol consumption, but that other offenses involved volitional choices reflecting a "tendency towards criminality" and "ignoring the boundaries of the court." The court was particularly disturbed, in light of the read-in offenses of false imprisonment and battery and Wondrachek's history of domestic violence, that Wondrachek had attempted to intimidate one or more witnesses during the pendency of these cases, and that he did not appear to appreciate the seriousness of his conduct. The court stated:

> [D]omestic violence ... [is] a big time problem, sir. It's not just an inside the family issue. This is a community issue, and I feel as though from your presentation that you think it ought to be left between two consenting adults if they want to be in an abusive relationship.
>
> Well, I'm here to tell you that ain't the way it works, and it's time to throw a flag relative to that for your information and for your edification because the continuation of it will either result in someone being killed or you going back to prison for a longer period of time.
>
> … You don't call witnesses up, I don't care how close you are in a relationship, you don't try to get them to change their testimony.

> That is an offense to my court and to my court process, sir. That's — And you know that. You've been around this tree enough to know that there are boundaries by how you conduct yourself, and you don't try to work the system by leaning on people that may be called to testify….

The court further explained that it was concerned with the effect that the domestic violence would have upon the children who had witnessed it, and how it could distort their image of normal interactions between men and women. The court concluded:

> I think [a child witness who had sent a letter to the court] needs to hear and I think the public needs to hear and I certainly think Mr. Wondrachek needs to hear that there are consequences to conduct. Your conduct here is so layered in what I'll call a typical pattern of criminal thinking that it raised issues for me as to whether or not the State's recommendation in this case is sufficient.

Contrary to Wondrachek's contention, it was not necessary for the circuit court to expressly disavow counsel's comments regarding Wondrachek's racial beliefs. Rather, the circuit court's discussion demonstrates that it sentenced Wondrachek based on entirely proper factors.

IT IS ORDERED that the judgments of conviction and postconviction order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals