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DISTRICT IV

July 5, 2016

To:

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

2014AP2012-CR

State of Wisconsin v. Cornelius Hill (L.C. # 2012CF808)

Before Lundsten, Higginbotham and Sherman, JJ.

Cornelius Hill appeals a judgment of conviction. 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 (2013-14).¹ We affirm.

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

Hill argues that the court erroneously exercised its discretion by not appointing standby counsel, even though Hill did not request such an appointment. We reject the argument for two reasons.

First, the argument is being raised for the first time on appeal. Hill did not file a postconviction motion. Before appealing in a criminal case, a defendant must first raise all issues by postconviction motion, unless the issue is sufficiency of the evidence or one previously raised during trial court proceedings. WIS. STAT. § 974.02.

Hill's brief appears to be based on an unstated assumption that a circuit court has the obligation to decide *sua sponte* whether to appoint standby counsel, even when the defendant does not ask for standby counsel. However, Hill cites no law to that effect, and we are not aware of any. Accordingly, the lack of such an appointment by the court cannot be considered a decision or ruling of any kind, and does not qualify as an issue that was "previously raised" for purposes of allowing it to be raised on appeal without first filing a postconviction motion.

Second, case law makes it clear that the non-appointment of standby counsel, when the defendant has not requested such an appointment, does not implicate any right of the defendant. *State v. Cummings*, 199 Wis. 2d 721, 754 n.17, 546 N.W.2d 406 (1996). If the lack of such an appointment is not tied to any right of the defendant, then we are unable to see what theory would lead to relief for the defendant. In other words, even if the circuit court somehow did erroneously exercise its discretion in making its (nonexistent) decision about appointing standby counsel, there is no reason why that conclusion would lead to the relief Hill asks for, namely, reversal of the judgment and a new trial.

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

Diane M. Fremgen
Clerk of Court of Appeals