



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](http://www.wicourts.gov)

**DISTRICT II**

February 15, 2017

To:

Hon. Ralph M. Ramirez  
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

Katherine Desmond Lloyd  
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

Donald D. Dietzman 217145  
Kettle Moraine Corr. Inst.  
P.O. Box 282  
Plymouth, WI 53073-0282

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

---

2016AP555

State of Wisconsin v. Donald D. Dietzman (L.C. #2012CF823)

Before Neubauer, C.J., Gundrum and Hagedorn, JJ.

Donald D. Dietzman appeals pro se from an order denying his motion for postconviction relief. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2015-16).<sup>1</sup> We affirm the order of the circuit court.

In 2013, Dietzman was convicted following a jury trial of second-degree recklessly endangering safety, fleeing an officer, operating a motor vehicle while intoxicated (OWI) as a

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version.

third offense, obstruction, and disorderly conduct. The circuit court imposed an aggregate sentence of twelve years of imprisonment and one and one-half years of jail time.

After sentencing, Dietzman moved pro se for the circuit court to find him eligible for the substance abuse program. The court denied the motion. Dietzman then moved for relief through postconviction counsel, arguing that his trial counsel was ineffective and that he was denied his due process right to a fair trial. Again, the court denied the motion. Dietzman appealed, and this court affirmed. *State v. Dietzman*, No. 2014AP1115-CR, unpublished slip op. (WI App Apr. 29, 2015).

In February 2016, Dietzman returned to the circuit court with a WIS. STAT. § 974.06 motion, arguing that his postconviction counsel was ineffective for not challenging (1) the sufficiency of the evidence on the OWI count, (2) inaccurate information at sentencing, and (3) the court's decision denying him eligibility in the substance abuse program. Following a hearing on the matter, the court denied the motion. This appeal follows.

On appeal, Dietzman contends that the circuit court erred in denying his WIS. STAT. § 974.06 motion. The court's written order denying relief indicates that it was based, in part, on the hearing on the motion. Unfortunately, the record does not include a transcript of that hearing.<sup>2</sup>

---

<sup>2</sup> Dietzman failed to file a statement on transcript in this appeal. We noted this failure in an April 25, 2016 order and warned him "that the lack of a transcript limits review to those parts of the record available to the appellate court, and, in the absence of a trial transcript, this court will assume the facts necessary to sustain the [circuit] court's decision are supported by the record."

As the appellant, Dietzman was responsible for ensuring that the record is complete on appeal. *State ex rel. Darby v. Litscher*, 2002 WI App 258, ¶5 n.4, 258 Wis. 2d 270, 653 N.W.2d 160. When the record is incomplete, we must assume that the missing material supports the circuit court’s ruling. *Id.* Given the state of the record in this case, we cannot say that the court erred in denying Dietzman relief.

In any event, Dietzman failed to show that he was entitled to relief. “[A] defendant who alleges in a [WIS. STAT.] § 974.06 motion that his postconviction counsel was ineffective for failing to bring certain viable claims must demonstrate that the claims he wishes to bring are clearly stronger than the claims postconviction counsel actually brought.” *State v. Romero-Georgana*, 2014 WI 83, ¶4, 360 Wis. 2d 522, 849 N.W.2d 668. Dietzman did not do this in his motion.

Dietzman’s claims are also without merit. Here, there was ample evidence to support the OWI conviction. Moreover, there is no indication that the circuit court actually relied upon inaccurate information at sentencing. Finally, the record supports the court’s decision to deny Dietzman eligibility in the substance abuse program.<sup>3</sup>

Upon the foregoing reasons,

---

<sup>3</sup> To the extent we have not addressed any other argument raised by Dietzman on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) (“An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.”).

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to  
WIS. STAT. RULE 809.21.

---

*Diane M. Fremgen*  
*Clerk of Court of Appeals*