



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

February 9, 2017

To:

Hon. Dale T. Pasell
Circuit Court Judge
LaCrosse County Courthouse
333 Vine Street
La Crosse, WI 54601

Pamela Radtke
Clerk of Circuit Court
La Crosse County Courthouse
333 Vine Street, Room 1200
La Crosse, WI 54601

Tim Gruenke
District Attorney
333 Vine St. Rm. 1100
La Crosse, WI 54601

Katherine Desmond Lloyd
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Edward L. Mathews 508720
Racine Corr. Inst.
P.O. Box 900
Sturtevant, WI 53177-0900

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

2014AP884-CR

State of Wisconsin v. Edward L. Mathews (L.C. # 2011CF579)

Before Lundsten, Higginbotham and Sherman, JJ.

Edward Mathews appeals a judgment of conviction and 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. *See* WIS. STAT. RULE 809.21 (2015-16).¹

We affirm.

In our order of August 26, 2016, we remanded this case to the circuit court for a retrospective determination of whether Mathews' waiver of his right to postconviction and

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

appellate counsel was made knowingly, voluntarily, and intelligently, and whether he was competent for self-representation. That court has determined that Mathews' waiver was proper and that he was competent. The record was returned to this court on December 23, 2016, and a notice was sent to the parties informing them of that.

In our August 26, 2016 order we noted that an aggrieved party may obtain review of the circuit court's new order on remand by filing a statement of objections within fourteen days of the record being returned to this court. *See* WIS. STAT. § 808.075(8). We have not received any statement of objections. In our August 26 order we stated that, if the court made the findings that it now has made and there was no subsequent objection, we would continue with a review of the arguments Mathews has made in this appeal while self-represented. We now do so.

On appeal, Mathews argues that he should be allowed to withdraw his plea because his trial counsel was ineffective by withdrawing a suppression motion before Mathews pled guilty.

To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if defendant makes an inadequate showing on one. *See id.* at 697. We affirm the trial court's findings of fact unless they are clearly erroneous, but the determination of deficient performance and prejudice are questions of law that we review without deference to the trial court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

The circuit court held an evidentiary hearing on the issue of ineffective assistance of counsel at which Mathews and his trial counsel testified. The court denied the motion. In doing so, the court found that Mathews agreed to have the suppression motion withdrawn as part of his

agreement to plead guilty, in part based on counsel's advice that the case against Mathews was strong even if the evidence in question was suppressed.

In his argument on appeal, Mathews does not appear to dispute that he understood the suppression motion would be withdrawn as part of his plea agreement. He does not argue that the court's finding that he understood and agreed is clearly erroneous. Therefore, we accept that finding. Because trial counsel's withdrawal of the suppression motion was done with Mathews' understanding and agreement, and to put into place the plea agreement that Mathews wanted to accept, counsel's performance was not deficient.

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