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DISTRICT IV

April 10, 2017

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

2016AP990-CR

State of Wisconsin v. Theresa M. Jedrzejewski (L.C. # 2013CF444)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

Theresa M. Jedrzejewski was found guilty of battery to a law enforcement officer and resisting or obstructing an officer. *See* WIS. STAT. §§ 940.20(2) and 946.41(1) (2013-14).¹ Jedrzejewski was represented by a court-appointed attorney. The issue on appeal arises from Jedrzejewski's postconviction claim that she wanted to represent herself at trial. 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. We affirm.

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

After being arrested for first-offense operating a motor vehicle while intoxicated, Jedrzejewski made several statements that caused the arresting officers to question her mental health. Prior to transporting Jedrzejewski to a facility for a mental health evaluation, officers needed a blood draw as part of a “medical clearance.” During that blood draw, Jedrzejewski became physically resistant. Three officers were needed to restrain Jedrzejewski so that the technician could complete the blood draw. During the struggle, Jedrzejewski pinched one of the officers in the arm, leaving a golf-ball sized bruise.

At Jedrzejewski’s initial appearance, she told the circuit court she did not want an attorney, especially a public defender because “[t]hey’re only on [the court’s] side.” At a subsequent hearing, the circuit court asked Jedrzejewski if she wanted an attorney. Jedrzejewski replied, “[y]es, if I could, but ... I don’t want a public defender” because she did not believe the quality of representation would be adequate. The court ascertained that Jedrzejewski would not qualify for public defender representation. When the court asked Jedrzejewski if she wanted the court to appoint an attorney to represent her, Jedrzejewski replied, “[i]f that’s what you want then, if it makes you guys happy, I will talk to them. I can’t say I’ll accept them. I will if I feel what he’s saying, I think I might accept him then.” The circuit court appointed Attorney Alex Stormont to represent Jedrzejewski.

Jedrzejewski waived her right to a jury trial. A trial to the circuit court was held and Jedrzejewski was found guilty. Jedrzejewski did not raise any concerns about counsel’s representation during trial.

Jedrzejewski filed a postconviction motion for a new trial, arguing that she was denied her constitutional right to represent herself because of trial counsel’s ineffectiveness.

Jedrzejewski alleged that she “twice broached with [counsel] the subject of terminating their attorney-client relationship” and “asked [him] how to go about the process of relieving him.” Jedrzejewski alleged that counsel told her that “insufficient grounds existed to terminate his representation.” Jedrzejewski claimed that counsel’s response was incorrect and amounted to the denial of her constitutional right to represent herself. The circuit court denied Jedrzejewski’s postconviction motion without an evidentiary hearing.

Whether a postconviction motion alleges facts which, if true, would entitle the defendant to relief is a question of law that we review de novo. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). 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. Non-conclusory allegations should present the “who, what, where, when, why, and how” with sufficient particularity for the circuit court to meaningfully assess the claim. *Id.*, ¶23. No hearing is required 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). If the motion fails to allege sufficient facts, the circuit court has the discretion to deny the postconviction motion without a hearing. *Bentley*, 201 Wis. 2d at 310-11.

In her postconviction motion, Jedrzejewski argued that her attorney’s statement that there were insufficient grounds to terminate his representation constituted ineffective assistance of counsel, because it denied her the right to represent herself. She alleged that when she asked counsel “how to go about ... relieving him,” he told her that there were “insufficient grounds ... to terminate his representation.” That exchange is not enough to trigger Jedrzejewski’s constitutional right to represent herself. See *State v. Darby*, 2009 WI App 50, ¶26, 317 Wis. 2d

478, 766 N.W.2d 770 (a defendant's expression of dissatisfaction with his or her current attorney or a request for another attorney are not a clear and unequivocal declaration that the defendant wants to proceed pro se). Therefore, Jedrzejewski did not allege sufficient facts that, if true, would establish both that counsel provided deficient performance and that the defendant was prejudiced by that performance. See *State v. Swinson*, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12. The circuit court properly denied Jedrzejewski's postconviction motion without an evidentiary hearing.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order are summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals