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

2016AP1119

State of Wisconsin v. Brian A. Patterson (L.C. #2010CF599)

Before Kessler, Brash and Dugan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Brian A. Patterson, *pro se*, appeals the circuit court's order denying his motion for postconviction relief brought pursuant to WIS. STAT. § 974.06 (2015-16).¹ Patterson argues: (1) the circuit court should have disqualified itself from deciding the postconviction motion; (2) his right to select counsel of his own choosing was violated; and (3) the order appointing

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

counsel violated his due process rights and should be vacated. After 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.

Patterson was charged with first-degree intentional homicide with the use of a dangerous weapon. The State Public Defender found Patterson ineligible for appointed counsel, so the circuit court appointed Attorney Ann Bowe to represent Patterson at the rate of \$60/hour. Patterson was convicted after a jury trial. The circuit court ordered Patterson to reimburse the county \$5520 for Bowe's fees at the rate of \$50 per month. Patterson appealed the conviction with the assistance of the State Public Defender's Office because he was found eligible for appointed counsel after trial. Patterson did not raise any issues related to Bowe's appointment. We affirmed the judgment of conviction on July 22, 2014.

In the interim, Patterson reached a settlement with the City of Milwaukee in a civil case. As part of the settlement, Patterson agreed to repay all court costs, restitution and fees associated with his criminal case. The City of Milwaukee paid \$5520 of Patterson's settlement to Milwaukee County for Bowe's attorney fees.

After the settlement, Patterson filed a *pro se* postconviction motion collaterally attacking his judgment of conviction. He argued, among other things, that he should not have been convicted of first-degree intentional homicide because the jury acquitted him of second-degree intentional homicide, the jury instructions denied his right to defense, and that his double jeopardy rights were violated. He also argued that the circuit court erred by finding him indigent and appointing him counsel. Patterson's appeal from that order is pending in Appeal No. 2016AP383.

Three months later, Patterson filed a second *pro se* collateral postconviction motion arguing that the circuit court was biased and should disqualify itself, that the order appointing Bowe to represent him violated his right to select counsel of his own choosing, and that the order appointing Bowe should be vacated so that Milwaukee County could return \$5520 that he paid in fees via the settlement. On May 16, 2016, the circuit court denied the motion. Patterson appeals.

Patterson first argues that the circuit court should have disqualified itself from considering the first collateral postconviction motion and the current postconviction motion because it was biased. Patterson contends that the court appointed Bowe several days before the status conference at which it discussed the appointment with him, which shows that the circuit court had already “pre-judged” whether Bowe would be appointed.

“The right to an impartial judge is fundamental to our notion of due process.” *State v. Goodson*, 2009 WI App 107 ¶8, 320 Wis. 2d 166, 771 N.W.2d 385. We begin with “a presumption that a judge acted fairly, impartially, and without prejudice.” *State v. Herrmann*, 2015 WI 84, ¶3, 364 Wis. 2d 336, 867 N.W.2d 772. The circuit court appointed Bowe to represent Patterson and directed her to appear at a status conference the following week. At the status conference, the circuit court addressed the matter with Patterson and formalized Bowe’s appointment. There is nothing about this process that suggests that the circuit court acted in a biased manner or with an appearance of bias with regard to Bowe’s appointment. To the contrary, the circuit court went to great lengths to accommodate Patterson. Therefore, we reject Patterson’s argument that the circuit court should have disqualified itself.

Patterson next argues the circuit court’s order appointing trial counsel for him violated his right to retain counsel of his own choosing. We agree with the circuit court’s analysis

rejecting this argument: “The defendant was sitting in court when the court made the appointment and set forth the terms. He did not object to those terms, but proceeded to avail himself of Attorney Bowe’s services. He cannot now be heard to say he never wanted or approved of counsel. In fact, he was appreciative of the fact that the court had appointed Attorney Bowe at the end of the [status] conference.” Because Patterson did not inform the circuit court that he wished to select different counsel, voiced no objection to Bowe’s appointment and the terms thereof, and affirmatively availed himself of her assistance, we reject Patterson’s claim that the circuit court violated his right to retain counsel of his own choosing.

Finally, Patterson contends that the order appointing counsel violated his due process rights and should be vacated so that the \$5520 he paid Milwaukee County from his settlement can be returned to him. We agree with the State’s analysis rejecting this claim:

Due process requires notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *State v. Thompson*, 2012 WI 90, ¶46, 342 Wis. 2d 674, 818 N.W.2d 904. In this case, while the circuit court apparently signed the order appointing Attorney Bowe on August 19, 2010, the order was not entered—that is, filed with the clerk of court, *see* WIS. STAT. § 807.11(2)—until the date of the status conference, August 30, 2010.

[T]he circuit court began the status conference by informing Patterson that it had appointed Attorney Bowe to represent him at the rate of \$60 per hour and that he would be required to reimburse Milwaukee County at the rate of \$50 a month starting October 1. It then asked for and received Patterson’s approval of Attorney Bowe’s appointment. Because the circuit court afforded Patterson notice of the appointment and its conditions, because the circuit court gave Patterson an opportunity to be heard, and because Patterson told the circuit court that he wanted Attorney Bowe to represent him, ... the circuit court [did not] violate[] his right to due process when it appointed Attorney Bowe.

(Record citations omitted).

For the reasons explained above, we conclude that Patterson's due process rights were not violated when the circuit court appointed Bowe to represent him. Therefore, the circuit court properly denied Patterson's motion to vacate the appointment and order that \$5520 be returned to him.²

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals

² After briefing was complete, Patterson filed a motion and a supplemental motion asking this court to take judicial notice of documents from a case he has filed against Attorney Bowe. Patterson has not shown that the documents are relevant to this appeal. We deny the motion.