



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 II

February 14, 2018

To:

Hon. Ralph M. Ramirez
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Robert Snow
Chief Deputy Clerk
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Steven C. Kilpatrick
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

Dwight Wilkerson, #367377
Oshkosh Corr. Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

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

2017AP395

State of Wisconsin v. Dwight Wilkerson (L.C. #2001CF1089)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

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).

Dwight Wilkerson appeals *pro se* from a circuit court order denying his motion to vacate a restitution order. 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).¹ We affirm because the state of the record does not permit us to address Wilkerson's appellate issues.

Wilkerson was convicted in 2002 of two counts of theft of movable property. The circuit court ordered \$712,151 in restitution as a condition of probation. Wilkerson did not commence a WIS. STAT. RULE 809.30 (2001-02) appeal of his conviction. In February 2017, Wilkerson filed a *pro se* motion to vacate restitution on the following grounds: an erroneous exercise of discretion by the circuit court, lack of proof that \$712,151 in restitution was due, his trial counsel was ineffective in relation to the restitution proceeding, and the circuit court did not determine his ability to pay restitution. On February 9, 2017, the circuit court held a hearing on the motion and denied it for the reasons stated on the record. The hearing transcript is not included in the record on appeal.

We summarily affirm the circuit court's order for two reasons. First, the motion hearing transcript, which contains the circuit court's reasoning, is not included in the record on appeal. It is the appellant's responsibility to ensure that the record is sufficient to facilitate appellate review. *Seltrecht v. Bremer*, 214 Wis. 2d 110, 125, 571 N.W.2d 686 (Ct. App. 1997). If materials necessary for the appeal are not included in the record, "we must assume that the missing material supports the trial court's ruling." *Fiumefreddo v. McLean*, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). In the absence of the transcript, we assume the transcript supports the circuit court's ruling on Wilkerson's motion.

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

Second, Wilkerson raises on appeal an argument that he did not make in his circuit court motion: the alleged impact on his restitution obligation of a change in the law. We do not decide issues raised for the first time on appeal. *State v. Caban*, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). The party raising an appellate issue “has the burden of establishing, by reference to the record, that the issue was raised before the circuit court.” *Id.* The absence of the hearing transcript does not permit us to determine whether Wilkerson raised this issue during the motion hearing.

We affirm because the state of the record does not permit us to address Wilkerson’s appellate issues.

Upon the foregoing reasons,

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

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

Diane M. Fremgen
Acting Clerk of Court of Appeals