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DISTRICT IV

June 4, 2018

To:

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

2017AP653-CR

State of Wisconsin v. John F. Wright, Jr. (L.C. # 2015CF1102)

Before Blanchard, Kloppenburg and Fitzpatrick, 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).

John Wright, Jr., pro se appellant, appeals his judgment of conviction and an order denying his postconviction motion for resentencing. Based upon our review of the briefs and the

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We summarily affirm.

Wright was convicted, after a jury trial, of misdemeanor battery and disorderly conduct for an incident involving the mother of his son. Wright received a sentence of two years of initial confinement and two years of extended supervision on each count, to be served consecutively. Wright filed a postconviction motion alleging prosecutorial misconduct and ineffective assistance of trial counsel. The circuit court denied the motion after an evidentiary hearing. Wright now appeals. On appeal, Wright renews the arguments made in his postconviction motion and adds an additional argument. He argues that a police officer who testified against him perjured himself on three occasions and that, therefore, Wright's conviction was obtained by false evidence. For the reasons discussed below, we reject all of Wright's arguments.

The State asserts that Wright's argument regarding witness perjury was not first raised in the circuit court and is therefore forfeited on appeal. *See State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 ("Issues that are not preserved at the circuit court, even alleged constitutional errors, generally will not be considered on appeal."). Wright fails to respond to the State's forfeiture argument in his reply brief. A proposition asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994). Accordingly, we reject Wright's perjury argument on forfeiture grounds.

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

We turn next to the arguments of prosecutorial misconduct and ineffective assistance of counsel raised in Wright's postconviction motion. The State correctly asserts that the transcript of the hearing on the postconviction motion is not included in the record on appeal, and that it is the appellant's responsibility to make sure that the appellate record is complete. *See State v. McAttee*, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774. In the absence of a transcript, we must assume that every fact essential to sustain the circuit court's exercise of discretion is supported by the record. *Austin v. Ford Motor Co.*, 86 Wis. 2d 628, 641, 273 N.W.2d 233 (Wis. 1979). Accordingly, we must assume that the circuit court's decision to deny Wright's postconviction motion is supported by the record, and we affirm on that basis.

IT IS ORDERED that the judgment and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals