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DISTRICT IV

September 11, 2018

To:

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

2017AP1131	State of Wisconsin v. Mark J. Griffin, Jr. (L.C. # 2002CF1969)
2017AP1132	State of Wisconsin v. Mark J. Griffin, Jr. (L.C. # 2002CF1972)
2017AP1133	State of Wisconsin v. Mark J. Griffin, Jr. (L.C. # 2002CF2010)
2017AP1134	State of Wisconsin v. Mark J. Griffin, Jr. (L.C. # 2002CF2043)
2017AP1135	State of Wisconsin v. Mark J. Griffin, Jr. (L.C. # 2002CF2069)

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

Mark Griffin, Jr., *pro se* appellant, appeals a circuit court order denying his motion for postconviction relief. After reviewing 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 summarily affirm.

Griffin was charged in 2002 with twenty-six counts of forgery in five separate cases, all as a party to a crime. On September 30, 2002, Griffin pled no contest to ten of the forgery charges pursuant to a plea agreement. More than fourteen years later, on May 16, 2017, Griffin filed a postconviction motion under WIS. STAT. § 974.06, seeking plea withdrawal under ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Griffin argued that the plea colloquy was deficient because the circuit court failed to ensure that he understood the nature of the charges and the potential punishment if convicted, failed to ascertain whether any promises were made to Griffin in connection with his anticipated pleas, failed to assess his capacity to understand the issues at the plea hearing, and failed to find a factual basis for the pleas. Griffin further argued that his trial counsel was ineffective for misinforming him of the maximum penalty he faced and for "conspiring" with the prosecutor to induce Griffin to enter his pleas. The court denied the motion without an evidentiary hearing, and Griffin now appeals.

As a threshold matter, we note that many of the arguments in the appellant's brief are undeveloped or unsupported by adequate factual and legal citations, as required by the Rules of Appellate Procedure. *See* WIS. STAT. RULE 809.19(1)(d) and (e) (setting forth the requirements for briefs). The depth of our discussion below is therefore proportional to Griffin's development—or lack of development—of each issue. Any of Griffin's arguments that we do

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

not address are either patently meritless or so inadequately developed that they do not warrant our attention. *See* ***Libertarian Party of Wisconsin v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996) (an appellate court need not discuss arguments that lack "sufficient merit to warrant individual attention"); ***Dieck v. Unified Sch. Dist. of Antigo***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (we need not address arguments unsupported by record citations).

A motion for plea withdrawal under ***Bangert*** must (1) make a prima facie showing of a violation of WIS. STAT. § 971.08(1) or other court-mandated duties by pointing to passages or omissions in the plea hearing colloquy; and (2) allege that the defendant did not know or understand the information that should have been provided at the plea hearing. *See* ***State v. Brown***, 2006 WI 100, ¶39, 293 Wis. 2d 594, 716 N.W.2d 906. In this case, the State concedes that the circuit court failed to ascertain that Griffin understood the nature of the charges, because the court did not ask Griffin during the plea colloquy whether he understood party-to-a-crime liability. However, the State asserts that Griffin failed to allege in his motion for plea withdrawal that he did not understand party-to-a-crime liability and therefore, his challenge to the plea colloquy fails. Griffin did not file a reply brief and, therefore, the State's assertion on this point is deemed admitted. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (a proposition asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted).

The State asserts that all of Griffin's remaining arguments regarding the plea colloquy also fail, and provides record citations to show that the circuit court correctly explained the potential punishment Griffin faced, ascertained that no promises were made outside of the plea agreement to induce Griffin's pleas, established on the record that Griffin had the capacity to

understand the issues at the plea hearing, and found a factual basis for his pleas in the criminal complaints. The State also asserts that Griffin's arguments regarding ineffective assistance of counsel are insufficient because he failed to allege facts showing a reasonable probability that, but for trial counsel's alleged error, he would not have pleaded no contest and would have insisted on going to trial. Such a showing is required for a motion for plea withdrawal based on ineffective assistance of counsel under ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996). Again, Griffin did not file a reply brief to respond to the State's position on any of these issues and, therefore, the State's assertions on these points are deemed admitted. *See* ***Schlieper***, 188 Wis. 2d at 322.

In sum, Griffin fails to establish that he is entitled to relief.

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

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

Sheila T. Reiff
Clerk of Court of Appeals