



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](http://www.wicourts.gov)

**DISTRICT IV**

August 12, 2019

To:

Hon. Frank D. Remington  
Circuit Court Judge  
Br. 8, Rm. 4103  
215 S. Hamilton St.  
Madison, WI 53703

Carlo Esqueda  
Clerk of Circuit Court  
215 S. Hamilton St., Rm. 1000  
Madison, WI 53703

Michael C. Sanders  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

Jackie L. Phillips 192647  
Sand Ridge Secure Treatment Center  
P.O. Box 800  
Mauston, WI 53948

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

---

2018AP1671

State of Wisconsin v. Jackie L. Phillips (L.C. # 2015CI1)

Before Fitzpatrick, 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).**

Jackie Phillips, pro se, appeals the circuit court's order committing him as a sexually violent person under WIS. STAT. ch. 980 (2017-18).<sup>1</sup> Phillips also appeals the court's order denying his motion for postdisposition relief. 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(1). We affirm.

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted. We refer to the current version of the statutes for ease of reference. During the relevant time periods, there have been no pertinent changes to the statutory provisions we cite.

Phillips states in his principal brief that there are eighteen issues in this appeal. We discern two main issues, and we limit our discussion to those two issues. As to other possible issues, Phillips fails to provide a coherent argument. Although we make some allowances for deficiencies in pro se briefs, “[w]e cannot serve as both advocate and judge.” *State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992). “A party must do more than simply toss a bunch of concepts into the air with the hope that either the trial court or the opposing party will arrange them into viable and fact-supported legal theories.” *State v. Jackson*, 229 Wis. 2d 328, 337, 600 N.W.2d 39 (Ct. App. 1999).

The first issue we address is whether the circuit court lacked jurisdiction over the State’s petition to commit Phillips as a sexually violent person under WIS. STAT. ch. 980. Under WIS. STAT. § 980.02(1m), the petition “shall be filed before the person is released or discharged.” We have interpreted this statutory provision to mean that the petition must be filed either before the person is freed from confinement in prison or before the person’s entire prison sentence is completed. *State v. Stanley*, 2014 WI App 89, ¶23, 356 Wis. 2d 268, 853 N.W.2d 600. Here, the petition was filed on February 4, 2015, and the circuit court found that Phillips was not released from prison until February 10, 2015. Thus, the petition was timely, and we see no reason to conclude that the circuit court lacked jurisdiction.

Phillips argues that Wisconsin courts lost jurisdiction on January 9, 2015, when a Wisconsin circuit court judge in another county signed an order authorizing Phillips’ extradition to Georgia. We are not persuaded. Phillips assumes that the act of signing the extradition order immediately discharged him from his Wisconsin prison sentence and transferred his custody to the Georgia DOC. However, Phillips does not show that his assumption is factually or legally correct. To the contrary, Phillips’ postdisposition motion includes materials indicating that,

despite the extradition order, Phillips remained in Wisconsin custody. These materials show that the Georgia DOC was not authorized to take custody of Phillips until February 13, 2015, and that, after the WIS. STAT. ch. 980 petition was filed on February 4, 2015, the Georgia DOC decided not to transport Phillips to Georgia so long as he remained in the custody of the Wisconsin Department of Health Services pursuant to chapter 980.

The second issue we address is whether the circuit court erred in rejecting Phillips' claim that counsel was ineffective by failing to ensure the appearance of a witness at Phillips' WIS. STAT. ch. 980 trial. To demonstrate ineffective assistance of counsel, Phillips must establish both: (1) that counsel's performance was deficient; and (2) that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, he must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

Here, the circuit court denied Phillips' ineffective assistance claim without an evidentiary hearing. Thus, the question is whether Phillips alleged sufficient material facts that, if true, would entitle him to relief. *See State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. We conclude that, regardless whether Phillips sufficiently alleged deficient performance, Phillips failed to sufficiently allege prejudice.

Phillips asserts that the witness would have offered testimony refuting the State's characterization of Phillips' juvenile and criminal record. However, as the circuit court noted, Phillips has not sufficiently explained how the witness would have had personal knowledge of the relevant events. Thus, Phillips has not sufficiently alleged that the witness would have provided admissible, non-hearsay testimony refuting the State's characterization of Phillips'

record. Accordingly, Phillips has also failed to allege a reasonable probability that the witness's testimony would have changed the outcome at trial.

Therefore,

IT IS ORDERED that the circuit court's orders are summarily affirmed pursuant to 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*