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DISTRICT I

November 22, 2022

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee Safety Building
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Mark Anthony Girtler 412949
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

John D. Flynn
Electronic Notice

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

2021AP1344

State of Wisconsin v. Mark Anthony Girtler (L.C. # 2016CF899)

Before Brash, C.J., Donald, P.J., and Dugan, 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).

Mark Anthony Girtler, *pro se*, appeals the circuit court's order denying his motion for postconviction relief brought pursuant to WIS. STAT. § 974.06 (2019-20).¹ Girtler argues that: (1) he should be allowed to withdraw his guilty plea because of a statement the circuit court made during sentencing; and (2) the circuit court judge was biased against him. Based upon a

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

Girtler pled guilty to one count of intentionally contacting a victim after a no-contact order had been issued for a felony conviction, as a domestic abuse repeater and with a domestic abuse enhancer. The circuit court imposed the maximum sentence of eight years of initial confinement and three years of extended supervision, to be served consecutively to the sentence Girtler was already serving. Girtler did not file a direct appeal from his conviction. Several years later, Girtler brought a postconviction motion raising his current claims. The circuit court denied Girtler's motion without a hearing.

A circuit court must hold an evidentiary hearing if a motion alleges facts which, if true, would entitle the defendant to relief. *State v. Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). "Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law that we review *de novo*." *Id.* However, if the motion "fails to allege sufficient facts ... to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief," the circuit court has the discretion to deny the motion without a hearing. *Id.* at 309-10 (citation omitted). When we review a circuit court's discretionary act in this regard, we will affirm the circuit court unless it erroneously exercises its discretion. *Id.* at 311.

Girtler first contends that he should be allowed to withdraw his guilty plea because the circuit court made the following statement when it imposed his sentence:

I am ordering, as a condition of this sentence ... you are to have absolutely no contact with [P.M.]. That means for any purpose whatsoever you should not even mention her name.

....

You are not to contact her or cause anyone else to contact her. If you do that, you will be subject to additional penalties. I cannot—just can't make this clear enough. There is no coming back from this. There is no contact with her for any reason under any circumstances by any method. I can't say it clearly enough.

Girtler contends that the circuit court's directive prohibiting him from mentioning the victim's name violates his First Amendment right to free speech and, as such, he should have been warned that the circuit court could impose this condition before he entered his plea.

Girtler's argument is wholly lacking in merit. We agree with the circuit court's analysis rejecting this argument:

The defendant has misconstrued the court's order. The court's order was for no contact with P.M. The court's corresponding comment that the defendant should not even mention P.M.'s name was not an order, but was one of the many ways the court sought to impress upon the defendant the seriousness of the situation, given the defendant's previous disregard for domestic abuse injunctions and no-contact orders.

The circuit court's sentencing remarks were entirely proper and do not provide grounds for Girtler to withdraw his plea.

Girtler next contends that he was entitled to a hearing on his claim that the circuit court judge was biased in favor of the prosecution because the judge was seeking employment at the Milwaukee County District Attorney's Office at the time she sentenced him. This argument, too, is meritless. Girtler has not alleged any factual basis for his claim that the circuit court judge was actively seeking employment at the District Attorney's Office. Even if she had been, Girtler is not entitled to relief. We agree with the circuit court's analysis rejecting this argument.

Here, there is not even an infinitesimal chance that what the court chose to do while presiding over the defendant's case would

have any bearing whatsoever on any prospective hiring decision by the Milwaukee County District Attorney's Office given the court's prior employment history in that office. Regardless, the court was not employed by the Milwaukee County District Attorney at the time of the defendant's sentencing, and was not acting in alignment with their interests. The record conclusively establishes that there was no appearance of bias nor objective facts demonstrating that the defendant was treated unfairly. Therefore, because the defendant has not rebutted the presumption of impartiality, the court finds that no due process violation occurred, and the request for [relief] is denied.

(Citation omitted). For these reasons, we reject Girtler's argument that the circuit court judge was biased.

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.

Sheila T. Reiff
Clerk of Court of Appeals