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DISTRICT IV

January 4, 2013

To:

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Loren L. Mundt
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You are hereby notified that the Court has entered the following opinion and order:

2011AP2085-CR State of Wisconsin v. Loren L. Mundt (L.C. # 2007CF371)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Loren Mundt appeals a judgment of conviction and an order denying his motion for postconviction 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) (2009-10).¹ We affirm.

Mundt's lengthy brief appears to consist mainly of several ways of making the same argument. Mundt's argument centers on his belief that he should have been provided with copies

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

of the backs of checks before trial. One strand of his argument is that the State violated discovery orders or its obligation to turn over exculpatory evidence by not providing this material. The State asserted that it did not have possession of the material, and therefore was not required to provide it. *See* WIS. STAT. § 971.23(1). Mundt has not provided any factual reason to believe that the State had possession of the material. Therefore, this claim was properly denied without an evidentiary hearing.

Mundt may also be framing the issue as whether his trial counsel was ineffective by not making sufficient effort to seek the material at issue. To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). A claim of ineffective assistance cannot be granted without an evidentiary hearing under *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

Here, although the circuit court held a hearing on Mundt's postconviction motion, Mundt apparently did not subpoena any of the necessary witnesses to attend, such as trial counsel and the expert that Mundt claimed would testify about the signatures on the backs of the checks. As the circuit court pointed out in denying the motion, the absence of evidence from necessary witnesses meant that the ineffective assistance issue was not properly before the court for a decision. In addition, as to prejudice, the court noted that Mundt's postconviction theory about forged signatures was inconsistent with his defense at trial. Mundt's argument on appeal does not appear to address that point in any detail.

To the extent that Mundt may be trying to raise other issues on appeal, we conclude that they are inadequately briefed, and we decline to address them further. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

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

Diane M. Fremgen
Clerk of Court of Appeals