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

DISTRICT II

February 13, 2013

To:

Hon. Charles H. Constantine
Circuit Court Judge
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Rose Lee
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

W. Richard Chiapete
Assistant District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Sara Lynn Larson
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Timothy J. Kaprelian 281863
Dodge Corr. Inst.
P.O. Box 700
Waupun, WI 53963-0700

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

2012AP396 State of Wisconsin v. Timothy J. Kaprelian (L.C. #2006CF823)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Timothy J. Kaprelian appeals pro se from an order denying his motions for postconviction relief. Kaprelian contends that the circuit court should have recused itself from hearing his motions due to bias. He further contends that his motions alleged sufficient facts to entitle him to an evidentiary hearing on his claim of ineffective assistance of counsel. 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 (2011-12).[1] We affirm the order of the circuit court.

In 2007, Kaprelian was convicted following a plea of no contest to two counts of second-degree sexual assault and one count of false imprisonment. The charges stemmed from an allegation that Kaprelian had brutally sexually assaulted the victim, his roommate, over a period of ten hours.

In March 2011, Kaprelian moved to have the circuit court judge, the Honorable Charles H. Constantine, removed from his case. The court initially held the motion in abeyance. However, it later denied the motion at a hearing after Kaprelian moved for a decision on the matter.

In November 2011, Kaprelian filed several motions for postconviction relief and requested an evidentiary hearing on the claim of ineffective assistance of counsel. The circuit court denied the motions without an evidentiary hearing after concluding that Kaprelian's claims lacked merit. This appeal follows.

On appeal, Kaprelian first contends that the circuit court should have recused itself from hearing his motions due to bias. His primary reason for requesting recusal is that the court once wrote a letter to Kaprelian, expressing its belief that Kaprelian was represented by "very competent trial counsel."

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

Whether a judge is a "neutral and detached magistrate" is a question of constitutional fact that we review de novo. ***State v. Neuaone***, 2005 WI App 124, ¶16, 284 Wis. 2d 473, 700 N.W.2d 298. "We begin with a presumption that the judge is free of bias and prejudice and the burden is on the party asserting judicial bias to show by a preponderance of the evidence that the judge is biased or prejudiced." ***Id.***

Here, we are not persuaded that the circuit court's statement to Kaprelian regarding Kaprelian's trial counsel is evidence of judicial bias. After all, the court did not state that Kaprelian's trial counsel was "very competent" during his specific representation of Kaprelian. As the court explained at the hearing on the matter, "[T]he fact that a person is a competent attorney does not mean [he or she] cannot be ineffective for a specific case." Because Kaprelian has not otherwise shown bias by a preponderance of the evidence, we conclude that the court was not required to disqualify itself.

Kaprelian next contends his postconviction motions alleged sufficient facts to entitle him to an evidentiary hearing on his claim of ineffective assistance of counsel.

Whether a postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is subject to a mixed standard of review. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. First, we determine whether the motion alleges sufficient facts that, if true, would entitle the defendant to relief. ***Id.*** This is a question of law that we review de novo. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). If the motion raises such facts, the circuit court must hold an evidentiary hearing. ***Id.*** However, if the motion does not raise facts sufficient to entitle the defendant to relief, "or presents conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief,

the circuit court has the discretion to grant or deny a hearing." ***Allen***, 274 Wis. 2d 568, ¶9. We review the court's discretionary decision under the deferential erroneous exercise of discretion standard. ***Id.***

Kaprelian's main complaint in his postconviction motions is that had his trial counsel investigated the case more fully, he would have found the victim's credibility to be untruthful. Thus, Kaprelian maintains that he would not have entered his no contest plea. Kaprelian also asserts that his trial counsel should have objected to "false evidence" presented by the State concerning what had occurred; that "a crime has been committed against him [by the district attorney] in this case"; and, that "[a] reasonable competent attorney after informing himself fully on the facts and the law would have prepared and presented the true state of affairs."

We agree with the circuit court that Kaprelian's postconviction motions could be denied without an evidentiary hearing. To begin, many of Kaprelian's allegations are conclusory at best. Moreover, the record conclusively demonstrates that he is not entitled to relief on his claim of ineffective assistance of counsel for failing to find the victim's credibility to be untruthful. As noted by the State, the victim in this case provided a thorough statement about what she endured. Police also observed numerous injuries on the victim corroborating her account of what transpired. In addition, Kaprelian admitted to police that he "had gone too far," that he knew he

was in trouble for what he had done, and that he had no doubt of the victim's account of what occurred.[2]

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[2] To the extent we have not addressed an argument raised by Kaprelian on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").