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DISTRICT II

July 24, 2013

To:

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

2012AP1856-CR

State of Wisconsin v. Mark A. Steckhan (L.C. # 2011CF614)

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

Mark A. Steckhan appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI) as a fifth offense. He contends that the circuit court erred in denying his collateral attack on a prior OWI conviction. 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 judgment.

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

In June 2011, Steckhan was arrested and charged with OWI as a fifth offense. He subsequently filed a motion collaterally attacking a prior OWI conviction from August 2000. In it, he argued that his plea in that case was entered without a valid waiver of counsel.

By the time Steckhan filed his motion collaterally attacking his prior OWI conviction, it was no longer possible to obtain a transcript of the proceedings in which he was convicted. The court reporter had destroyed her untranscribed notes after seven years. The only available record was a notation in the circuit court record that Steckhan was advised of his right to counsel, understood that right, and decided not to have an attorney.

The circuit court held a hearing on Steckhan's motion. There, the court found the notation in the record sufficient to show that Steckhan was adequately advised of his right to counsel in his prior OWI case. Accordingly, it denied his motion. Steckhan then pled no contest to the charged offense and filed this appeal.

A defendant may collaterally attack a prior conviction on the ground that his or her constitutional right to counsel was violated because he or she did not knowingly, voluntarily, and intelligently waive that right. *See State v. Ernst*, 2005 WI 107, ¶25, 283 Wis. 2d 300, 699 N.W.2d 92. When collaterally attacking a prior conviction, the defendant has the initial burden to make a prima facie showing that his or her constitutional right to counsel was violated. *State v. Baker*, 169 Wis. 2d 49, 77, 485 N.W.2d 237 (1992); *Ernst*, 283 Wis. 2d 300, ¶25. Whether the defendant has made a prima facie showing is a question of law we review de novo. *Baker*, 169 Wis. 2d at 78; *Ernst*, 283 Wis. 2d 300, ¶26.

Here, Steckhan's primary challenge in his motion to collaterally attack his prior OWI conviction was that the circuit court did not discuss with him the benefits of having an attorney

or the difficulties and disadvantages of self-representation prior to his waiver of counsel. The problem with Steckhan's motion is that it never makes the case that he did not understand that information. See *Ernst*, 283 Wis. 2d 300, ¶25 (for there to be a valid collateral attack, a defendant must point to facts that demonstrate that he or she did not know or understand the information that should have been provided and therefore did not knowing, intelligently, and voluntarily waive the right to counsel). Because Steckhan's motion does not contain such facts, we conclude that Steckhan failed to make a prima facie showing that he was deprived of his right to counsel in his prior OWI case. As a result, we are satisfied that the circuit court properly denied the motion.²

Upon the foregoing reasons,

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

Diane M. Fremgen
Clerk of Court of Appeals

² Although the circuit court did not rely on this ground, this court may affirm a circuit court's decision on a rationale different from the one on which the circuit court relied. See *State v. Treproci*, 2001 WI App 126, ¶45, 246 Wis. 2d 261, 630 N.W.2d 555.