COURT OF APPEALS
DECISION
DATED AND FILED

September 18, 2001

Cornelia G. Clark
Clerk of Court of Appeals

Nos. 00-3438-CR & 00-3439-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL THOMPSON,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Milwaukee County: DAVID A. HANSHER and CLARE L. FIORENZA, Judges. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

¶1 PER CURIAM. Michael Thompson[1] appeals from a judgment of conviction entered after he pled guilty to one count of armed robbery, party to a crime, contrary to WIS. STAT. § 943.32(2).[2] He also appeals from a judgment of conviction entered after he pled no contest to one count of robbery with threat of force, contrary to WIS. STAT. § 943.32(1)(b), guilty to one count of operating a motor vehicle without the owner's consent, contrary to WIS. STAT. § 943.23(2), and guilty to one count of fleeing from an officer, contrary to WIS. STAT. § 346.04(3). He further appeals from an order denying his postconviction motion to withdraw his pleas or, in the alternative, to be resentenced. Thompson claims: (1) that his sentence should be reversed because he was denied the right to counsel at a show-up identification and that he should receive a hearing because the show-up identification was impermissibly suggestive; (2) that this court should remand his cases for an evidentiary hearing because the plea colloquies were inadequate; (3) that his pleas should be withdrawn because he was incompetent to enter them; (4) that his pleas should be withdrawn because they were coerced; (5) that the prosecutor breached the plea bargain by asking for a read-in and because statements made at sentencing violated the plea bargain; (6) that his pleas should be withdrawn because the court failed to inform him that a lawyer may discover defenses or mitigating circumstances; and (7) that his trial counsel was ineffective for various reasons discussed below. We affirm.

[1] Michael Thompson also uses the names Nathaniel L. Traylor and Scotty Roby. We will refer to him as Michael Thompson for the purposes of this appeal.

[2] All references to the Wisconsin Statutes are to the 1998-1999 version unless otherwise noted.

I. BACKGROUND

¶2 Thompson appeals from two cases that were consolidated for sentencing. In case 98–CF–748, Thompson was charged with one count of robbery with threat of force, one count of operating a motor vehicle without the owner's consent, and one count of fleeing an officer.[3] All of these counts were charged as habitual-offender offenses. After an indictment was filed, Thompson filed a pre-trial motion to suppress an identification made by a witness at a show-up identification conducted about two hours and fifteen minutes after the offense. He alleged that it was impermissibly suggestive because he was the only person presented to the witness. The trial court denied the motion, concluding that the show-up identification was not impermissibly suggestive.

¶3 At sentencing, Thompson entered pleas of no contest to the robbery charge, guilty to operating a motor vehicle without the owner's consent, and guilty to fleeing an officer. The court sentenced him to thirty-five years in prison.

¶4 In case 98–CF–747, Thompson was charged with one count of operating a vehicle without the owner's consent, party to a crime, and with two counts of armed robbery, party to a crime. Pursuant to a plea bargain, Thompson pled guilty to one count of armed robbery, party to a crime, and the State agreed to dismiss the other two counts. The trial court sentenced him to forty years in prison to run consecutive to the thirty-five-year sentence imposed in case 748.

[3] We will discuss the cases in the order that they were decided by the trial court, rather than in numerical sequence, to maintain consistency with the record.

¶5 Thompson filed a postconviction motion in both cases seeking to withdraw his pleas or, in the alternative, to be resentenced.[4] Thompson claimed: (1) he should be allowed to withdraw the pleas in both of his cases, claiming they were not entered knowingly and voluntarily because he was medicated for psychological problems; (2) he should be allowed to withdraw the plea in case 748 because he did not have a full understanding of his constitutional rights or the elements of the crimes; (3) he should be allowed to withdraw his plea in case 747 because he was denied effective assistance of counsel when his attorney entered a plea on his behalf knowing that he was not properly medicated; (4) he should be allowed to withdraw his pleas in both cases because he was denied effective assistance of counsel when his attorney failed to file timely motions, investigate the offenses, investigate witnesses, investigate the line-up, and render competent advice regarding the decision to enter his pleas; (5) he should be able to withdraw his plea in case 747 because his counsel was ineffective for failing to inform him that one of the prosecution witnesses was unable to identify him at a line-up, claiming that he would not have pled if he had known this; (6) he should be resentenced in case 747 because his attorney was ineffective for failing to object to the prosecution's sentencing recommendations; (7) he should be resentenced because the State breached the plea bargain in case 748 when it recommended that he receive the maximum sentence; (8) he should be resentenced in both cases because he did not understand the full nature of the charges because his attorney failed to inform him of the severity of the read-in charges; and (9) he should be resentenced in both cases because his right to effective assistance of counsel was violated when his attorney disclosed his own history of substance abuse at the

[4] Thompson filed the same motion for both cases.

sentencing hearing. The trial court denied the motion without a hearing and Thompson appealed. We will address each of his arguments in turn.

II. DISCUSSION

A. Show-up Identification

¶6 First, Thompson argues that his sentence in case 748 should be reversed because there were problems with the show-up identification.[5] Specifically, Thompson claims that he was denied the right to counsel when a witness identified him at a show-up identification without a lawyer present. He also claims that his due-process rights were violated because the show-up identification was unnecessarily suggestive. We disagree.

1. Right to Counsel

¶7 Thompson claims that his right to counsel was violated when a witness identified him at a show-up identification without an attorney present. To preserve an issue for appellate review, however, WIS. STAT. § 974.02(2) requires a defendant to file a postconviction motion in the trial court raising the issue unless "the grounds are sufficiency of the evidence or issues previously raised." Thompson failed to raise this issue in his postconviction motion. Further, Thompson did not present this issue to the trial court in his motion to suppress identification or at the plea hearing for case 748 when the trial court considered

[5] A show-up is an out-of-court pretrial identification procedure in which a suspect is presented singly to a witness for identification purposes. *See* ***Stovall v. Denno***, 388 U.S. 293, 302 (1967) (a show-up identification is "[t]he practice of showing suspects singly to persons for the purpose of identification, and not part of a lineup"), *overruled on other grounds by* ***Griffith v. Kentucky***, 479 U.S. 314, 326 (1987).

the motion. Thus, this issue is not preserved for appellate review and we will not address it for the first time on appeal. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443–444, 287 N.W.2d 140, 145 (1980) (generally, an appellate court will not review an issue raised for the first time on appeal), *superseded on other grounds by* WIS. STAT. § 895.52.

2. Identification Procedure

¶8 Thompson also asks this court to remand the case for a hearing to determine whether there is an "independent origin" for the identification. He claims that his due process rights were violated by an unnecessarily suggestive procedure when the police showed only him to a witness for identification. He further claims that the unnecessarily suggestive show-up identification tainted an identification made at the preliminary hearing.

¶9 A criminal defendant is denied due process when identification evidence admitted at trial stems from a pretrial police procedure that is "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification." ***Simmons v. United States***, 390 U.S. 377, 384 (1968). Show-ups, however, are not *per se* impermissibly suggestive. ***State v. Isham***, 70 Wis. 2d 718, 725, 235 N.W.2d 506, 509–510 (1975). Rather, a criminal defendant bears the initial burden of demonstrating that a show-up identification was impermissibly suggestive. ***State v. Mosley***, 102 Wis. 2d 636, 652, 307 N.W.2d 200, 210 (1981). If this burden is met, the burden shifts to the state to demonstrate that "the identification was nonetheless reliable under the 'totality of the circumstances.'" ***Id***. In determining whether an identification was reliable despite the suggestive nature of the police procedure, the following factors are relevant: (1) the opportunity of the witness to view the criminal at the time of

the crime; (2) the witness's degree of attention; (3) the accuracy of her prior description of the criminal; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation. ***State v. Powell***, 86 Wis. 2d 51, 65, 271 N.W.2d 610, 617 (1978).

¶10 Thompson does not identify any factors that demonstrate that the show-up identification was impermissibly suggestive. His only allegation, that the show-up identification was impermissibly suggestive because it was a one-on-one identification, is simply not enough. *See* ***State v. Wolverton***, 193 Wis. 2d 234, 265, 533 N.W.2d 167, 178 (1995) ("[t]he mere fact that a suspect was sitting in a police car is insufficient to demonstrate that the showup was 'so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification'"). To hold otherwise would be tantamount to saying that a show-up identification is *per se* impermissibly suggestive. ***Id.*** The law is otherwise. ***Id.*** Accordingly, Thompson has not met his initial burden of demonstrating that the show-up identification was impermissibly suggestive.

B. Pleas

1. Knowing, Voluntary, and Intelligent Plea

¶11 Thompson attacks the validity of his pleas on many grounds. First, he claims that he did not knowingly, voluntarily, and intelligently enter a guilty plea in case 747. He alleges that the plea colloquy does not sufficiently demonstrate that he understood the elements of the crimes or his constitutional rights. He also claims that his guilty plea was involuntary in case 748 for the same reasons and asks this court to remand for an evidentiary hearing on the issue.

¶12 A defendant challenging the adequacy of a plea hearing must make two threshold allegations. ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12, 26 (1986). First, the defendant must make a showing of a prima facie violation of WIS. STAT. § 971.08(1)(a) or other mandatory procedures. ***Id.*** Second, the defendant must allege that he did not know or understand the information which should have been provided at the plea hearing. ***State v. Giebel***, 198 Wis. 2d 207, 216, 541 N.W.2d 815, 817–818 (Ct. App. 1995). Whether a defendant has presented a *prima facie* case that a plea was entered knowingly, voluntarily, and intelligently is a question of "constitutional fact" that we will review without deference to the trial court. ***Bangert***, 131 Wis. 2d at 283, 389 N.W.2d at 30. The trial court's findings of historical facts will not be upset unless they are clearly erroneous. ***Id.***, 131 Wis. 2d at 283–284, 389 N.W.2d at 30.

¶13 To assure that a plea is knowingly, voluntarily, and intelligently entered, the trial court is obligated by WIS. STAT. § 971.08(1)(a) to ascertain whether a defendant understands the nature of the charges to which he or she is pleading, the potential punishment for those charges, and the constitutional rights being relinquished. ***Bangert***, 131 Wis. 2d at 260–262, 389 N.W.2d at 20–21. This function can be served by a detailed colloquy between the judge and the defendant or by referring to some portion of the record or communication between the defendant and his lawyer which exhibits the defendant's knowledge of the nature of the charges and the rights he relinquishes. ***Id.***, 131 Wis. 2d at 267–268, 389 N.W.2d at 23–24. The court may also make references to a signed waiver of rights form. ***State v. Moederndorfer***, 141 Wis. 2d 823, 827, 416 N.W.2d 627, 630 (Ct. App. 1987).

a. Case 748

¶14 The record reveals that the plea colloquy in case 748 was adequate. The court asked Thompson if he understood that he was charged with robbery, operating a vehicle without the owner's consent, and fleeing, if he understood what the penalties were, and if he understood why he had been charged with each offense. Thompson's counsel also informed the court that he read and explained the criminal complaint to Thompson, explained the elements of the offenses to him, read the penalties to him, and explained how the habitual criminality enhancer would affect the sentence.

¶15 The trial court also asked Thompson if he understood that he was giving up constitutional rights by pleading guilty. The court listed the rights and noted that Thompson had reviewed and signed a waiver-of-rights form with his attorney.

¶16 Moreover, Thompson fails to make the second allegation necessary to challenge the plea hearing: that he did not know or understand the information which should have been provided at the plea hearing. Thompson alleges in a conclusory fashion that the plea colloquy does not sufficiently demonstrate that he understood the elements of the crimes and his constitutional rights. Without supporting facts, this court cannot undertake a meaningful review of Thompson's claim and declines to do so. *See* ***State v. Bentley***, 201 Wis. 2d 303, 313, 548 N.W.2d 50, 55 (1996) ("conclusory allegations without factual support are insufficient" to support a plea withdrawal). Accordingly, Thompson has not established a prima facie violation of WIS. STAT. § 971.08 procedures and the trial court properly rejected his motion to withdraw his plea.

b. Case 747

¶17 Thompson failed to raise his claim regarding the plea colloquy in case 747 during trial court proceedings or in his postconviction motion. Accordingly, this issue is waived and we will not address it for the first time on appeal. *See* ***Wirth***, 93 Wis. 2d at 443–444, 287 N.W.2d at 145.

2. Competency

¶18 Thompson also alleges that he should be able to withdraw his pleas in case 748 because he was incompetent to enter them.[6] He claims that he could not understand the proceedings due to "a severe mental disorder" that caused him to hear voices.

¶19 The competency findings of a circuit court will not be upset unless they are clearly erroneous. ***State v. Byrge***, 2000 WI 101, ¶ 45, 237 Wis. 2d 197, 614 N.W.2d 477. The focus of a competency examination is modest — to verify the defendant's mental capacity to understand the proceedings and to assist counsel at the time of the proceedings. ***State v. Slagoski***, 2001 WI App 112, ¶ 7, 244 Wis. 2d 49, 629 N.W.2d 50. A court must determine whether the defendant can understand the proceedings and assist counsel "with a reasonable degree of rational understanding." ***State v. Debra A.E.***, 188 Wis. 2d 111, 119, 523 N.W.2d 727, 732 (1994). Although a defendant may have a history of psychiatric illness, a medical condition does not necessarily render the defendant incompetent to stand

[6] In his brief, Thompson does not specifically state which case he is appealing from, but all of his references are to events that occurred during the motion and plea in case 748. Because Thompson has not addressed case 747 in his brief, we will not consider it on appeal. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-647, 492 N.W. 633, 642 (Ct. App. 1992) (arguments that are inadequately briefed will not be addressed).

trial. ***Haskins v. County Courts of Dodge County***, 62 Wis. 2d 250, 264–265, 214 N.W.2d 575, 582–583 (1974). To determine legal competency, the court considers a defendant's present mental capacity to understand and assist at the time of the proceedings. WIS. STAT. § 971.14(3)(c).

¶20 At the plea hearing, the trial court addressed Thompson's competency, which he put into question for the first time that day. The court questioned Thompson at length regarding his medical history, medications, and understanding of the proceedings. It found that he was taking medication, spoke well, and looked alert. Moreover, the trial court's findings were confirmed by the results of a competency examination prepared for sentencing — it revealed that Thompson was well oriented, with no psychotic symptoms or impairments in mood, attention, concentration, or memory. Accordingly, the trial court's finding that Thompson was competent to enter his pleas was not clearly erroneous.

3. Coerced Plea

¶21 Thompson next argues that he should be allowed to withdraw his pleas in case 748 because they were coerced. He claims that the State's threat to charge him with additional misdemeanor charges coerced him into entering a guilty plea. He alleges that this was improper because it was a threat to add a repeater amendment after arraignment. Thompson did not raise this claim in his postconviction motion. Thus, this issue is waived. *See* ***Wirth***, 93 Wis. 2d at 443–444, 287 N.W.2d at 145.

4. Breach of Plea Bargain

¶22 Thompson also alleges that the state breached the plea bargain in case 747. Whether the state's conduct violated the terms of the plea bargain is a

question of law which we review *de novo*. ***State v. Poole***, 131 Wis. 2d 359, 361, 394 N.W.2d 909, 910 (Ct. App. 1986). "If a guilty plea 'rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" ***State v. Ferguson***, 166 Wis. 2d 317, 321, 479 N.W.2d 241, 243 (Ct. App. 1991) (quoted source omitted). The law "proscribes not only explicit repudiations of plea [bargains], but also 'end-runs around them.'" ***Id.***, 166 Wis. 2d at 322, 479 N.W.2d at 243 (quoted source omitted.) Thus, the state may not accomplish through indirect means what it promised not to do directly, that is, it may not convey to the trial court that a more severe sentence is warranted than that recommended. ***Id.***

a. Read-in

¶23 Thompson contends that the State made a written promise to move to dismiss an armed robbery charge. He claims that the State violated this agreement when the charge was read-in at sentencing and that he never agreed to a read-in of this charge for sentencing purposes. Read-ins are admissions by the defendant to those charges. ***State v. Cleaves***, 181 Wis. 2d 73, 77–78, 510 N.W.2d 143, 145 (Ct. App. 1993). The sentencing court considers read-ins as part of a defendant's conduct in determining the appropriate sentence, and the State is prohibited from future prosecution of these charges. ***Embry v. State***, 46 Wis. 2d 151, 157–158, 174 N.W.2d 521, 524 (1970).

¶24 We conclude that Thompson agreed to a read-in of the robbery charge. He was present at the plea proceeding for case 747 when the prosecutor informed the court that she planned to ask for a dismissal and read-in of the armed

robbery count.[7] Both Thompson and his attorney agreed with and indicated that they understood the State's request. Because Thompson did not object to the read-in of the robbery charge, he admitted that he committed that crime, and we find that there is no breach of the plea bargain. *See* ***State v. Szarkowitz***, 157 Wis. 2d 740, 753, 460 N.W.2d 819, 824 (Ct. App. 1990) ("In Wisconsin, when a defendant agrees to crimes being read in at the time of sentencing, he makes an admission that he committed those crimes").

¶25 Thompson also fails to show where the alleged written promise with the State to drop the armed robbery charge can be found in the record. Because Thompson has not adequately addressed the allegation of a written promise in his brief, we will not consider it on appeal. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646–647, 492 N.W. 633, 642 (Ct. App. 1992) (arguments that are inadequately briefed will not be addressed). The State did not breach the plea bargain with regard to the read-in.

b. The State's Sentencing Remarks

¶26 Thompson further contends that the State agreed to "argue the facts and leave sentencing to the court." He claims that the State violated this agreement when the prosecutor's remarks to the sentencing judge went beyond the facts of the case. He argues that this is a breach of the plea bargain because the State in effect recommended the maximum sentence.

[7] Thompson was charged with two counts of armed robbery in case 747. He pled guilty to one charge and the other charge was read-in.

¶27 The plea bargain in this case did not prohibit the state from informing the trial court of aggravating sentencing factors. *See* ***Elias v. State***, 93 Wis. 2d 278, 285, 286 N.W.2d 559, 562 (1980) (pertinent factors related to the defendant's character and behavioral patterns cannot be "immunized by a plea [bargain] between the defendant and the state"). Moreover, a plea bargain which does not allow the sentencing court to be apprised of relevant information is void as against public policy. ***State v. McQuay***, 154 Wis. 2d 116, 125–126, 452 N.W.2d 377, 381 (1990).

¶28 Here, the prosecutor did not breach the spirit of the plea bargain. She began her sentencing remarks by stating that she was leaving the sentence to the court's discretion. She also indicated that she would only argue the facts. The prosecutor continued by recounting the offenses Thomas committed and asked the court to consider the defendant's background, the seriousness of the offenses, the protection of the community, and restitution for the victims. The prosecutor's remarks did not go beyond the facts. She merely apprised the court of facts pertinent to sentencing, and this certainly cannot be construed as an attempt to "end run" the plea bargain.

5. ***Ernst***

¶29 Thompson next argues that he should be allowed to withdraw his guilty plea because the court failed to inform him of the fourth requirement in ***Ernst v. State***, 43 Wis. 2d 661, 170 N.W.2d 713 (1969) (*overruled on other grounds by* ***State v. Bangert***, 131 Wis. 2d 246, 258–260, 389 N.W.2d 12, 18–20 (1986)): that the court alert the accused to the possibility that a lawyer may discover defenses or mitigating circumstances which would not be apparent to a layman such as the accused. *See* ***id.***, 43 Wis. 2d at 674, 170 N.W.2d at 719. It is

unclear which case Thompson refers to; however, this is irrelevant because Thompson failed to make this claim in his postconviction motion. Therefore, it is waived. *See* ***Wirth***, 93 Wis. 2d at 443–444, 287 N.W.2d at 145.

C. Ineffective Assistance of Counsel

¶30 Finally, Thompson argues that his counsel was ineffective for: (1) not presenting the issues adequately at the pre-trial motion to suppress the show-up identification in case 748, not investigating, interviewing and questioning witnesses, and not being prepared to argue the suppression motion; (2) not realizing that the State is prohibited from adding a repeater enhancement after arraignment; (3) failing to object to a sentencing recommendation that violated the plea bargain; and (4) not informing him of possible defenses or mitigating circumstances pursuant to ***Ernst***. We disagree.

¶31 To succeed on an ineffective assistance of counsel claim, a defendant must show: (1) that his counsel's performance was deficient; and (2) that he was prejudiced as a result. ***Strickland v. Washington***, 466 U.S. 668, 693 (1984). In the context of a plea withdrawal, to prove prejudice, the defendant must show that there is a reasonable probability that, but for the counsel's errors, he would not have pled guilty and would have insisted on going to trial. ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50, 53 (1996). Our standard for reviewing this claim involves a mixed question of law and fact. ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845, 848 (1990). Findings of fact will not be disturbed unless clearly erroneous. ***Id***. The legal conclusions, however, as to whether counsel's performance was deficient and prejudicial, present a question of law. ***Id***., 153 Wis. 2d at 28, 449 N.W.2d at 848. Finally, we need not address

both ***Strickland*** prongs if the defendant fails to make a sufficient showing on either one. ***Strickland***, 466 U.S. at 699.

1. Show–up

¶32 Thompson claims that he should be resentenced in case 748 because his trial counsel did not effectively handle the show-up identification. Specifically, he alleges that his attorney was ineffective for not presenting the issue adequately to the trial court, investigating, interviewing witnesses, or being prepared to argue the issue. He argues that if his counsel had called and questioned witnesses during the pre-trial hearing, he could have discovered more information.

¶33 A defendant who alleges a failure to investigate by his trial counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome of the case. ***State v. Flynn***, 190 Wis. 2d 31, 48, 527 N.W.2d 343, 349–350 (Ct. App. 1994). Thompson fails to allege how the information that his attorney should have discovered would have altered the outcome of the case. Thus, Thompson's allegations that his attorney failed to adequately present the issue and that he was unprepared to argue the issue are conclusory. Thompson does not allege relevant facts that would allow us to undertake a meaningful review of his claims. *See* ***Bentley***, 201 Wis. 2d at 313, 548 N.W.2d at 55. Accordingly, we cannot conclude that Thompson's trial counsel was deficient with regard to the show-up identification.

2. Coerced Plea

¶34 As part of his claim that his pleas in case 748 were coerced, Thompson argues that he should be entitled to withdraw his pleas because his trial

counsel was ineffective for failing to realize that a prosecutor is prohibited from adding a repeater amendment after the arraignment. As noted, Thompson waived this issue and his allegations in the context of an ineffective assistance of counsel claim are merely conclusory. *See* ***Bentley***, 201 Wis. 2d at 313, 548 N.W.2d at 55.

3. Breach of Plea Bargain

¶35 Thompson also claims that his trial counsel was ineffective in case 747 for failing to object to what he contends was the prosecutor's tacit recommendation that he receive the maximum sentence. As previously noted, the prosecutor did not breach the plea bargain; thus, Thompson's counsel cannot be ineffective for failing to object. Thus, Thompson failed to allege a prima facie ineffective assistance of counsel claim. *See* ***Strickland***, 466 U.S. at 693.

4. ***Ernst***

¶36 Finally, Thompson alleges that his trial counsel was ineffective for not informing him of possible defenses or mitigating circumstances. He has not, however, asserted what defenses or mitigating circumstances would have been material to his decision to plead, or why, had he been told of these matters, he would have insisted on going to trial. As we noted earlier, mere conclusory allegations are insufficient. *See* ***Bentley***, 201 Wis. 2d at 313, 548 N.W.2d at 55. Thus, he has not shown prejudice. *See* ***Kimmelman v. Morrison***, 477 U.S. 365, 375 (1986) (the defendant must prove that his claim is meritorious and that there is a reasonable probability that the verdict would have been different absent excluded evidence).

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.