

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 27, 2007

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP783

Cir. Ct. No. 2003CF284

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARSON DARNELL COMBS,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Monroe County:
STEVEN L. ABBOTT, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Carson Combs appeals from orders denying his motions for sentence modification following Combs' convictions for bail jumping

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

and criminal trespass contrary to WIS. STAT. §§ 946.49 and 943.14, and for postconviction relief from his bail jumping conviction. Combs contends that the circuit court erred in denying his motion for sentence modification because the circuit court judge demonstrated bias and should have recused himself from Combs' case. Combs also contends that the circuit court erred in failing to respond to his initial motion for postconviction relief under WIS. STAT. § 974.06 and in denying his second motion. We disagree, and therefore affirm.

Background

¶2 The facts pertinent to this appeal are undisputed.² In September 2003, the State charged Carson Combs with attempted first-degree intentional homicide, criminal trespass, misdemeanor bail jumping,³ attempted aggravated battery and aggravated battery.⁴ The court appointed a public defender to represent Combs. In October 2003, the court granted the public defender's motion to withdraw as counsel on Combs' request. The court instructed the public defender's office to appoint new counsel for Combs. In December 2003, Combs requested to discharge his second publicly appointed attorney. The public defender's office then informed Combs that pursuant to administrative rule, it would not appoint another attorney for him. On January 29, 2004, the court issued an order appointing an attorney for Combs at county expense.

² The following is a partial list of Combs' motions and the courts' rulings. Additional filings in the state and federal courts are not relevant to this appeal and therefore have not been listed in full.

³ In July 2003, Combs was released on bond following an arrest for domestic violence. As a condition of his bond, Combs was required to not commit any crimes and to not have any contact with his wife or her residence.

⁴ The battery charges were added by amendment in April 2004.

¶3 Following trial, the jury found Combs guilty of criminal trespass and bail jumping, and not guilty of attempted first degree intentional homicide, attempted aggravated battery and aggravated battery. Prior to sentencing, the State and Combs entered a joint recommendation of one hundred days in the county jail. The court rejected that recommendation and sentenced Combs to two years' probation, with sentence withheld, on both counts, to be served concurrently. The court ordered Combs to reimburse the county for attorney fees as a term of his probation.

¶4 Combs then appealed his criminal trespass conviction. On November 9, 2004, while the appeal of his criminal trespass conviction was pending, Combs submitted a WIS. STAT. § 974.06 motion for postconviction relief to the circuit court challenging his bail jumping conviction. Combs argued that because the underlying charge supporting his bond conditions had been dismissed following his bail jumping conviction, his bail jumping conviction should be overturned. He also alleged that the decision to file and maintain the original charge against him was due to prosecutorial misconduct and violation of his constitutional rights, thus rendering the court without jurisdiction to issue bond release conditions for him. The circuit court held a hearing on Combs' motion, and determined that the court could not rule on Combs' contentions as to his bail jumping conviction because the trial record containing his original bond conditions was in the court of appeals. Thus, Combs requested that the court hold his motion in abeyance. The court agreed, and instructed Combs to request a

hearing on his motion after the record was returned following the decision on appeal. The court stated it would not file the motion at that time.⁵

¶5 On December 30, 2004, Combs filed a motion for a new trial as to both the criminal trespass and bail jumping charges. Combs alleged as newly discovered evidence that the prosecutor suppressed evidence of the details of the domestic violence arrest and charge from the jury that was not known to Combs or his attorney. The substance of the allegations in Combs' motion for a new trial mirrored the allegations in his November 11, 2004 motion for postconviction relief. In January 2005, Combs filed a motion for relief from his judgments of conviction for criminal trespass and bail jumping, and moved the court to order the District Attorney to respond to Combs' November 9, 2004 motion. The circuit court temporarily denied Combs' January 2005 motions, which requested the court to take judicial notice of his November 9, 2004 motion. The court stated that the court's file was in the court of appeals, and that Combs was required to present a copy of each motion previously filed for the court to take judicial notice of those motions.

¶6 On July 7, 2005, we affirmed Combs' conviction for criminal trespass.⁶ In February 2006, the circuit court ordered Combs' probation extended for one year due to his failure to fulfill his obligation to reimburse the county for

⁵ In the transcript of the November 11, 2004 hearing, that court agreed to hold Combs' motion in abeyance, and said "I will just file it," then after instructing Combs to later request a hearing, said "So I'm not filing this." Combs argues that the court did file his motion at that time. Because this issue is not pertinent to this appeal, we need not resolve this dispute. It is sufficient for us to note that it is undisputed that Combs requested that the court hold his motion in abeyance until the trial file was returned from the court of appeals, and the circuit court agreed to do so.

⁶ In August 2005, we returned the circuit court's file.

attorney fees, pursuant to an agreement between Combs and the Department of Corrections. In April 2006, Combs filed a petition for a writ of habeas corpus to the Wisconsin Supreme Court, arguing the issues in his November 9, 2004 motion. The supreme court denied Combs' motion ex parte. In July 2006, Combs filed a motion to modify the terms of his probation, alleging that he was forced to sign the petition to extend his probation. The court held a hearing and determined that there was no change in circumstances or evidence of misrepresentation to Combs that would convince it to modify the one-year extension. On December 5, 2006, Combs filed another motion for sentence modification, alleging that the court-appointed attorney whose fees indebted him to the county, Lyle Schaller, had been suspended from the practice of law on the date of appointment until almost a month later. Combs alleged that the circuit court purposefully appointed Schaller, knowing he had been suspended from the practice of law, and that the fees billed to the county were fraudulent. Combs contended he could not be held liable for that fraudulent billing, and that because the court ordered probation solely based on its decision to impose that obligation on Combs, the sentence should be modified. Combs also submitted an affidavit in support of his motion for sentence modification, stating that he believed the circuit court judge's decision to order probation to enforce repayment rather than ordering a civil judgment was "a racially motivated response." He also stated that he considered the court's actions in extending his probation and denying his motions as an act of "extreme racial bias."

¶7 On January 2, 2007, the circuit court denied Combs' motion for sentence modification, explaining that both county reimbursement and the need to protect Combs' ex-wife played a role in its decision to impose probation, as stated on the record. The court stated that Schaller was not suspended from the practice

of law at the time of the court appointment,⁷ and that there was no indication that his bill was fraudulent. The court stated that “[t]his court sentences defendants based on the crime, the facts of the crime, their character, and their danger to the public. Race has no factor in any of those, and the court completely denies that it was motivated racially one way or another.” The court determined that there were no new factors requiring sentence modification, and Combs moved for reconsideration.

¶8 On February 9, 2007, Combs filed a motion for the circuit court judge to recuse himself from a scheduled judicial review of Combs’ sentence. Combs alleged that the judge forced him to sign the one-year extension of probation, acted rudely to Combs at the hearing on his previous motion to modify the conditions of his probation, and that the reason the judge denied his most recent motion for sentence modification was racial bias. The judge declined to recuse himself. Following the hearing, the judge converted Combs’ condition of probation to repay the county for attorney fees to a civil judgment and sentenced Combs to sixty days in jail for failing to follow the terms of his probation.

¶9 On March 12, 2007, Combs filed a second WIS. STAT. § 974.06 motion for postconviction relief, raising issues similar to those raised in his original § 974.06 motion filed on November 9, 2004, and including the additional issue of the status of his attorney at the time of court appointment. Combs also sent a letter to the court stating that his March 12, 2007 motion was an “updated motion of which was filed to the court on November 9, 2004 and never adjudicated.” The court denied the motion on March 19, 2007, citing Combs’

⁷ As the state concedes, this is contrary to the record.

failure to serve his latest motion on the district attorney, that the issues were the same as previous motions that went on to appeals,⁸ and that postconviction relief was barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 517 N.W.2d 157 (1994). Combs then wrote a letter to the court, explaining that he realized that he had not requested a hearing on his first WIS. STAT. § 974.06 motion after the file was returned from the court of appeals in August 2005. Thus, Combs asserted, he was re-filing it with added evidence and requesting a hearing. The court replied that there was no procedure allowing it to hold the original postconviction motion open for two-and-a-half years, and stated that absent a showing of new evidence, Combs' cases were over. Combs appeals.⁹

Standard of Review

¶10 We review a circuit court's decision to grant or deny a motion for sentence modification for an erroneous exercise of discretion. *State v. Noll*, 2002 WI App 273, ¶4, 258 Wis. 2d 573, 653 N.W.2d 895. A court properly exercises its discretion if it relies on the facts in the record and uses the correct legal standard and a rational process to reach a conclusion that a reasonable judge could reach. *State v. Wanta*, 224 Wis. 2d 679, 689, 592 N.W.2d 645 (Ct. App. 1999).

⁸ From the record, it appears this statement is not accurate. We have no indication that Combs appealed from any of his postconviction motions. However, as explained below, we affirm based on the fact that Combs' assertions do not entitle him to relief, and do not rely on the reasoning of the circuit court.

⁹ Combs has attached two of the circuit court's decisions to his notice of appeal: the January 2, 2007 decision denying his motion for sentence modification, and the March 19, 2007 decision denying his motion for postconviction relief. After reviewing Combs' arguments and the record, we conclude that Combs' first two arguments relate to his two postconviction motions, filed November 9, 2004 and March 12, 2007, and addressed in the court's March 19, 2007 decision. His last three arguments raise the issues presented in his December 5, 2006 motion for sentence modification and addressed in the court's January 2, 2007 decision.

¶11 We review a circuit court's decision to deny a motion for postconviction relief under WIS. STAT. § 974.06 without a hearing under a mixed standard of review. *State v. Love*, 2005 WI 116, ¶26, 284 Wis. 2d 111, 700 N.W.2d 62. First, we independently determine whether the defendant's motion asserts facts which, if true, would entitle the defendant to relief. *Id.* If it does not, the court has discretion as to whether or not to hold a hearing. *Id.*

Discussion

¶12 We will address Combs' claims of error as he has raised them.¹⁰ Toward that end, we have quoted the issues Combs raises directly from his brief.

(a) Does a circuit court judge have the right to ignore review of a postconviction relief motion filed by a defendant seeking relief from a criminal conviction, which was never directly appealed?

¶13 Combs focuses his question as whether a circuit court may ignore a defendant's motion for postconviction relief under WIS. STAT. § 974.06. However, that question is not presented by the facts of this case. While Combs asserts that the court never acknowledged or addressed his November 9, 2004 motion, that is not accurate. The court held a hearing on the motion two days after it was filed, on November 11, 2004. At the hearing, the court explained to Combs that because his motion centered on the validity of his bond conditions, and the

¹⁰ The State does not respond to each of the specific claims Combs raises. The State's response brief addresses only the issues of judicial bias and whether Combs' right to counsel was violated through the court's appointment of an attorney who was temporarily suspended from the practice of law. Thus, the State does not address the issue of whether the circuit court erred in failing to respond to Combs' initial postconviction motion or whether Combs is procedurally barred from bringing any further claims. Ignoring issues is a dangerous practice, and might have led to a remand.

record containing those conditions was in the court of appeals pending Combs' appeal of his criminal trespass conviction, the court was unable to address his arguments. Combs then specifically requested that the court hold his motion in abeyance while his appeal was pending. The court agreed to do so, and instructed Combs that he was required to specifically request a hearing on his motion after the record was returned from the court of appeals.

¶14 Thus, we do not agree with Combs that the circuit court ignored his first postconviction motion. However, this does not fully resolve the issue; Combs' arguments as to his first postconviction motion are intertwined with his arguments as to his second postconviction motion. Thus, we turn to Combs' next issue.

(b) Can a circuit court judge dismiss a defendant's filing of a second motion under § 974.06 WIS. STATS. seeking postconviction relief in the same case?

¶15 The answer to Combs' second question is "yes." There are factual scenarios under which a circuit court may properly dismiss subsequent motions for postconviction relief under WIS. STAT. § 974.06. See *Escalona-Naranjo*, 185 Wis. 2d at 178-86. Combs asserts, however, that the circuit court erred in dismissing his second motion for postconviction relief because his March 12, 2007 motion was a re-filing of his November 9, 2004 motion, which had not been adjudicated. Because the circuit court and Combs agreed to hold his motion in abeyance until the court of appeals returned the trial file, and the circuit court

instructed Combs to request a hearing after the file was returned, we turn to the actions by Combs and the court after the file was returned in August 2005.¹¹

¶16 Following the decision in his criminal trespass appeal, Combs' next submission to the circuit court was his December 5, 2006 motion for sentence modification.¹² That motion focused on Schaller's status when appointed and Combs' obligation to reimburse the county for attorney fees, and did not refer to or raise the issues in his November 9, 2004 motion. After that motion was denied, Combs moved for reconsideration. On February 10, 2007, Combs filed a motion asking the circuit court judge to recuse himself from an upcoming judicial review of his sentence. On March 12, 2007, Combs filed his second motion for postconviction relief, along with a letter informing the court that the filing was an updated version of the motion he had filed on November 9, 2004.

¶17 In its March 19, 2007 decision, the circuit court denied Combs' March 12, 2007 motion for postconviction relief under WIS. STAT. § 974.06. The court gave three reasons for denying Combs' most recent motion: (1) Combs did not serve his motion to the district attorney's office; (2) the motion was similar if not identical to previous postconviction motions that went on to appeals;¹³ and

¹¹ Our inquiry into the series of events relating to Combs' postconviction motions is frustrated by the fact that the State has not responded to Combs' assertions that the court improperly ignored or dismissed his postconviction motions nor set forth a statement of facts or procedural history. Thus, we must rely on Combs' version and our own review of the record.

¹² In the interim, Combs filed a petition for writ of habeas corpus with the Wisconsin Supreme Court, asserting the issues in his November 9, 2004 motion. In his brief, Combs states that prior to filing his petition for a writ of habeas corpus, he noted that the circuit court had not yet set a date for a hearing on his WIS. STAT. § 974.06 motion. He does not contend that he had requested a hearing in the circuit court following the decision on appeal.

¹³ See *supra* note 8.

(3) the motion was procedurally barred as presenting issues that should have been raised on appeal, under *Escalona-Naranjo*.

¶18 We appreciate Combs' concerns that the issues raised in his original and subsequent WIS. STAT. § 974.06 motion have not been addressed by the circuit court. We also appreciate the circuit court's concerns over Combs' delay in requesting a hearing on his original motion, and the need for finality in a case that has been extensively litigated. We conclude that rather than confronting the procedural complexity of this case to determine whether Combs' first and second WIS. STAT. § 974.06 motions were properly adjudicated by the circuit court, we will address the merits of Combs' November 9, 2004 motion for postconviction relief.¹⁴

¶19 In Combs' November 9, 2004 motion for postconviction relief from his conviction for bail jumping, he contends that the domestic violence charge that resulted in his release on bond, subject to bond conditions, was dismissed following his bail jumping conviction. Combs contends that the domestic violence charge was the result of prosecutorial misconduct, in that the prosecutor knew at the time of charging that it was not supported by sufficient evidence. Combs further contends that his arrest leading to the domestic violence charge was

¹⁴ This case is properly resolved on the merits of Combs' original WIS. STAT. § 974.06 motion because regardless of whether Combs' claim for relief under § 974.06 was improperly dismissed, we conclude that the arguments raised in his original motion do not entitle him to relief. See *State v. Love*, 2005 WI 116, ¶26, 284 Wis. 2d 111, 700 N.W.2d 62 (if defendant's motion for postconviction relief does not allege facts entitling defendant to relief, circuit court may deny the motion without a hearing). Thus, we need not address the reasoning in the circuit court's final decision to deny Combs postconviction relief, as our own review of the legal issues Combs has raised demonstrate that he is not entitled to relief. See *State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W.2d 679 (Ct. App. 1985) (even if we do not agree with circuit court's reasoning, we may affirm on appeal on other grounds).

obtained in violation of his constitutional rights, and thus deprived the court of jurisdiction to issue bond conditions. Thus, Combs asserts, his conviction for bail jumping must be overturned. We disagree.

¶20 A conviction for bail jumping requires the State to prove three elements: (1) that the defendant was arrested for or charged with a misdemeanor or felony; (2) that the defendant was released from custody on bond, subject to bond conditions as set by the circuit court; and (3) that the defendant intentionally failed to comply with those bond conditions. *State v. Schaab*, 2000 WI App 204, ¶9, 238 Wis. 2d 598, 617 N.W.2d 872. Combs does not dispute that any of the three required elements were lacking, instead asserting that the domestic violence charge underlying the bond conditions was later dismissed. But he fails to cite any authority for his assertion that this entitles him to relief. He is attempting to elevate his beliefs into law.

¶21 The first element of bail jumping requires only that Combs was *charged* with a misdemeanor. There is no requirement that the charge be pursued. Thus, Combs' argument that dismissal of the domestic violence charge affected his bail jumping conviction, or that the prosecutor purposefully delayed dismissing the domestic violence charge to obtain the bail jumping conviction, are without merit. The crime of bail jumping requires only that Combs was originally *charged* with a misdemeanor and released on bond. The *resolution* of the charge giving rise to the conditions of bond has no bearing on his bail jumping conviction.

¶22 Combs next argues that the domestic violence charge was obtained in violation of his constitutional rights and that therefore the circuit court was without jurisdiction to impose bond conditions. We need not delve into Combs' claims of constitutional error; regardless of the merits of Combs' assertions, a

defendant's deprivation of constitutional rights does not deprive a circuit court of personal jurisdiction over the defendant. See *State v. Snyder*, 131 Wis. 2d 147, 151-52, 388 N.W.2d 612 (1986). Thus, whether or not Combs' constitutional rights were violated in the course of his arrest for domestic violence, the circuit court had jurisdiction to set his bond conditions.

¶23 Combs describes his March 19, 2007 motion as a re-filing of his November 9, 2004 motion; indeed, his more recent motion raises the same issues as his November 9, 2004 motion. We have addressed his original motion. In Combs' updated version, he also raises the issue of ineffective assistance of counsel based on the fact that his attorney had been suspended from practicing law for the first few weeks of his appointment. This issue is also without merit. Although Combs has established that his attorney was suspended for several weeks for failure to pay his bar dues, he has not shown how this prejudiced his defense. See *State v. Mayo*, 2007 WI 78, ¶33, _Wis. 2d_, 734 N.W.2d 115 (two-part test for ineffective assistance of counsel requires defendant to demonstrate that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense). The prejudice prong requires the defendant to show that counsel erred so seriously as to deprive the defendant of a fair trial and that the trial's result is not reliable. *Id.*, ¶64.

¶24 The mere fact that Combs' attorney was suspended from practicing law for failure to pay his bar dues for some of the time the attorney represented Combs does not establish that Combs was denied effective assistance of counsel. See *United States v. Williams*, 934 F.2d 847, 851-52 (7th Cir. 1991) (claim of ineffective assistance of counsel may not rest on fact of attorney's suspension, requiring instead "a showing of actual errors and omissions by counsel that prejudiced the defense"). Combs argues that his counsel was ineffective due to a

conflict of interest established by the fact that Schaller was suspended from practicing law for the first few weeks of his appointment.¹⁵ Combs argues that it was not in Schaller's interest to obtain an acquittal for the charges for bail jumping and criminal trespass because the court could not have then placed Combs on probation and ordered him to reimburse the county. This argument makes little sense. Whether or not Combs was convicted of any charges, the county was required to and did pay Schaller's fees. The only issue left to decide was whether Combs would be responsible for reimbursing the county.¹⁶ Schaller had no interest in that decision.

¶25 To the extent Combs argues that Schaller had a loyalty to the circuit court and that therefore the court's interest in requiring Combs to reimburse the county created a conflict of interest for Schaller, we reject his argument as implausible. There is simply no indication in the record that Schaller and the circuit court conspired to appoint Schaller knowing his license had been suspended with the intent of then purposefully causing Combs' convictions on the two misdemeanor charges so that he could be put on probation and ordered to reimburse the county. This argument just does not make sense. There is no discernible connection between Schaller's three-week suspension for failure to pay

¹⁵ Combs also argues that Schaller's later suspension for embezzlement from his law firm supports his argument that Schaller embezzled money from the county through fraudulent billing. As the circuit court noted, Schaller's later suspension for embezzlement was not related to his earlier representation of Combs and did not deny him effective assistance of counsel.

¹⁶ Combs argues that he cannot reference Schaller's bill because he never received it. We note, as does Combs, that the State does not directly refute this allegation. However, the State identifies that at the November 11, 2004 hearing, the court stated it had Schaller's bill in its possession, and that Combs was free to examine it and make copies of it after the hearing. Combs stated he would do so. Combs does not explain why he did not follow through with the court's offer. Regardless, Combs' claims as to the validity of Schaller's bill are not relevant to his claim for ineffective assistance of counsel based on a conflict of interest.

bar dues, his appointment by the circuit court, and then the court's requiring Combs to reimburse the county as a condition of probation. We cannot create a far-fetched conspiracy as a means to overturn Combs' convictions.

¶26 Thus, we conclude that Combs' November 9, 2004 motion and his updated March 12, 2007 motion for postconviction relief did not allege facts which, if true, would entitle him to relief. Even if he is right that the domestic violence charge was dismissed following prosecutorial misconduct, and that the charge was obtained in violation of his constitutional rights, the court had jurisdiction to set his bond conditions. Combs does not contest the fact that he was charged with a misdemeanor, released subject to bond conditions, and then intentionally violated his bond conditions. Combs' assertions, even if true, do not entitle him to relief from his bail jumping conviction. Additionally, we can discern no facts establishing Combs was denied effective assistance of counsel based on the fact that Schaller was temporarily suspended from practicing law for failure to pay his bar dues, for the first few weeks of his appointment and well in advance of trial.¹⁷ Thus, his motions did not establish that he was entitled to relief and therefore were properly denied.

¹⁷ Combs also ties in the domestic violence charge to this claim, asserting that Schaller provided ineffective assistance of counsel by failing to obtain the documents from the domestic violence charge in the course of representing him on the bail jumping charge. The State asserts that without the facts of the domestic violence charge, it cannot refute whether Schaller was ineffective for failing to obtain those documents. However, as explained above, we fail to see how the evidence from the domestic violence charge would have affected the outcome of the bail jumping charge. We therefore conclude that Combs' argument is without merit.

(c) *Can ‘judicial bias’ be shown via presentation of evidence and documentation that shows “actual bias” and “apparent bias”?*

¶27 Combs argues in his motion for sentence modification that he was denied a fair trial based on judicial bias. Indeed, “[t]he right to a fair trial includes the right to be tried by an impartial and unbiased judge.” *State v. Walberg*, 109 Wis. 2d 96, 105, 325 N.W.2d 687 (1982). Whether a judge must recuse him- or herself is based on a two-part test: whether the judge subjectively believes he or she cannot act as an impartial judge, and whether objectively the judge’s impartiality could reasonably be questioned. *Id.* at 106. In this case, the circuit court judge made a clear statement on the record that he did not believe he was in any way biased against Combs. Thus, Combs’ arguments focus on the objective test, arguing that the record demonstrates actual and apparent bias.

¶28 Combs asserts that evidence of actual or apparent bias can demonstrate judicial bias. We agree that this is an accurate legal statement. The objective test for judicial bias may be met through evidence of actual or apparent bias. *State v. Gudgeon*, 2006 WI App 143, ¶¶21-26, 295 Wis. 2d 189, 720 N.W.2d 114. However, the fact that judicial bias may be shown through evidence that establishes actual or apparent bias does not entitle Combs to relief. The question at issue is whether there is evidence of actual or apparent bias shown by the circuit court judge’s conduct in this case. We conclude that the record does not contain any evidence of actual or apparent bias.

(d) Should a judge be required by rule to state on the “Record” an analysis indicating his or her reasoning in coming to a conclusion that he or she is not biased?

¶29 We decline to impose such a rule. The reason we employ a two-part test to determine judicial bias is to allow an independent review of whether a judge was biased against a defendant. Thus, we need not require a judge to explain why he or she concluded that he or she was not biased. If a judge did not subjectively believe he or she was biased, we conduct our own independent review of the record to ensure that there is no reasonable indication that the judge was biased. We do not agree that a better method would be requiring the judge to explain his or her reasons for believing that he or she was not biased.

(e) Was the Trial and Sentencing Court Judge biased in his decisions entered in this Case pre-trial and post-conviction, leading to defendant sustaining (2) two criminal convictions on April 29, 2004 via a Jury’s verdict of “guilty,” and the Judge’s actions of ignoring and denying defendant any postconviction relief?

¶30 Combs asserts that the circuit court judge was biased against him, reiterating much of his arguments from above. We find no support for Combs’ claims in the record. The core of Combs’ assertions is that the circuit court judge was racially biased against him, as demonstrated by the fact that he has either ignored or denied all of his motions and that he appointed an attorney to represent him who had been temporarily suspended from the practice of law.

¶31 First, there is no indication that any of the court’s actions were racially motivated. We have reviewed the transcripts and have found no situation in which the circuit court judge referenced Combs’ race. Next, there is no

indication from the record that the circuit court judge had a personal desire to reach a certain outcome in Combs' case. Combs' allegations as to the judge's bias based on his appointment of an attorney suspended from practicing law due to failure to pay bar dues for the first few weeks of the appointment are untenable. Beyond the fact that there is nothing in the record to support Combs' assertion that the judge knew Schaller's license was suspended when he appointed him, we cannot infer judicial bias based on the court's appointment of an attorney temporarily suspended from the practice of law. There is simply no connection that can reasonably be drawn between the judge's appointment of Schaller and his personal feelings about Combs' race.

¶32 Ultimately, Combs asserts that the judge was biased but does not offer valid, concrete reasons why he believes that. Combs refers only to the fact that he has not obtained the outcome he desires; he points to no facts in the record from which we could infer bias. If Combs were correct that an undesired result reveals bias, no conviction could stand. We conclude that there is no basis for us to reverse the court's decisions or overturn Combs' convictions.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

