COURT OF APPEALS
DECISION
DATED AND FILED

May 6, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP1205 **Cir. Ct. No. 1999CF6351**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK L. GUMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

Before Curley, P.J., Wedemeyer and Kessler, JJ.

¶1 CURLEY, P.J. Mark L. Guman, *pro se*, appeals the judgment convicting him of two counts of second-degree sexual assault by threat of use of force, contrary to WIS. STAT. § 940.225(2)(a), two counts of second-degree sexual assault of a child, contrary to WIS. STAT. § 948.02(2), and one count of

kidnapping, contrary to WIS. STAT. § 940.31(1)(b) (1997-98).[1] He also appeals the orders denying his postconviction motions.

¶2 Guman contends that he should be allowed to withdraw his guilty pleas because of the ineffectiveness of his trial attorney in several respects and because he was unable to knowingly, intelligently, and voluntarily waive his right to a jury trial due to his overmedicated condition. He also argues that the trial court erred in failing to advise him of all the elements of a charge of sexual assault by sexual contact and in accepting his plea. Finally, in the alternative, he argues that the trial court erroneously exercised its discretion at sentencing. Because his attorney was not ineffective, the record does not support Guman's claim that he was so overmedicated as to be unable to knowingly, intelligently, and voluntarily enter a plea or waive his right to a jury trial, and the trial court did not err or improperly exercise its discretion at sentencing, we affirm.

I. BACKGROUND.

¶3 According to the criminal complaint, on December 10, 1999, Guman called K.E., a thirteen-year-old friend of his daughter's, and told her he was planning a surprise party for his daughter and asked if K.E. would be willing to help him. She agreed and Guman picked her up and they returned to his apartment. Once inside, Guman told K.E. to accompany him to a bedroom where he had stored the decorations. When K.E. got to the bedroom, Guman grabbed both of her arms and threw her backwards onto the bed. Guman then began to fondle her breasts, pull up her shirt, and kiss her. K.E. struggled and was able to

[1] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

get away. Guman allowed K.E. to get up and walk to the living room where she immediately ran toward the door, but was stopped by Guman who threw her onto a couch. Guman continued to try to kiss her and fondle her breasts. As K.E. struggled to get away, Guman said, "Stop or I'll kill you." When K.E. began screaming, Guman turned on the stereo. Eventually Guman took K.E. to the kitchen, where she again tried to leave. Guman then pulled her back into the bedroom, where he forced her down on the bed, and again kissed her on the face, neck, and breasts. He then pulled down both her pants and his pants. K.E. continued to struggle. Guman pulled her into the living room, where K.E. unsuccessfully tried running for the door. Guman then took her back into the bedroom where K.E. saw Guman take pills out of a prescription bottle, crush them with a spoon, and snort the powder up his nose. The police reports reveal that Guman gave K.E. $100 if she would promise that she would not tell anyone what had occurred and had her write a note stating that the incident was her fault. After assuring Guman that she would not tell anyone about the incident, Guman drove her home. K.E., however, reported the attack to her parents.[2]

¶4 The complaint also reflects that after his arrest, in a statement given to police, Guman confirmed the sequence of events related by K.E., except he did not indicate ever threatening to kill her, and later denied having done so. Other documents reveal that Guman told the police that the pills he snorted were Ritalin and that he was taken to the hospital after he told police that he had consumed sixty tablets in a twelve-hour time span. Guman was later transferred to the

[2] Guman insists that he did not offer the money; rather, K.E. asked him for money in exchange for her silence.

Psychiatric Crisis Service after telling the officers and personnel at the hospital that he wanted to commit suicide.

¶5 Eventually, Guman was released and placed in custody. Approximately three months later, after waiving his right to a preliminary hearing, Guman pled guilty to all five counts as the result of a plea negotiation. The State told the court that in exchange for Guman's guilty pleas,

> [T]he State would be recommending 20 years in Wisconsin State Prison on Count 1 [second-degree sexual assault (force or violence)], and 20 years in Wisconsin State Prison on Count Number 2 [second-degree sexual assault of a child] to run concurrently with each other, 20 years Wisconsin State Prison on Count 3 [second-degree sexual assault (force or violence)], and 20 years Wisconsin State Prison on Count 4 [second-degree sexual assault of a child] to run concurrently with each other but consecutively to the prison terms in Counts 1 and 2. As to Count 5 [kidnapping], the State would recommend 40 years Wisconsin State Prison to run consecutively to the prison sentences in Counts 1, 2, 3 and 4. Basically the State would be recommending 80 years in prison.

¶6 The trial court accepted the pleas and adjourned the sentencing for several months. At sentencing, the trial court heard from various witnesses, including a doctor who had prepared a psychiatric report on Guman. The trial court sentenced Guman to a twenty-year prison sentence on each of the first four counts, to be served consecutively. On the kidnapping charge, the trial court sentenced Guman to twenty-five years in prison, consecutive to the other four counts. However, the trial court stayed that sentence and placed Guman on probation for twenty-five years. Following his sentencing, Guman filed a notice of intent to pursue postconviction relief.

¶7 The record indicates that after being convicted, Guman was appointed postconviction counsel who notified Guman in September 2000 that it

was his intention to close his file unless Guman disagreed, in which case postconviction counsel would file a no-merit report. Counsel asked Guman to contact him within two weeks. Guman never contacted his postconviction lawyer within that timeframe and no no-merit report was ever submitted.[3] In 2005, Guman, now acting *pro se*, filed a postconviction motion contending that the trial court erred in the taking of his guilty pleas, as well as erroneously exercised its discretion at sentencing, and that both his trial attorney as well as his postconviction counsel were ineffective for multiple reasons. With respect to Guman's contention that both of his attorneys were ineffective, he requested a ***Machner*** hearing.[4] In response, the court ordered briefs.

¶8 In December 2005, the trial court partially denied Guman's postconviction motion. The trial court denied Guman's claim that the trial court never asked him if he had been threatened or promised anything because the guilty plea questionnaire, signed by Guman, contained a statement that "I have not been threatened or forced to enter this plea." It also determined that Guman had been advised of his appellate rights because his signature appeared on a form that set forth his appellate rights. Additionally, the trial court denied Guman's claim that the trial court erroneously exercised its discretion at sentencing. The trial court did, however, agree to hold a ***Machner*** hearing to determine whether his trial counsel was ineffective and, in turn, whether his postconviction counsel was

[3] The no-merit procedure is set forth in ***Anders v. California***, 386 U.S. 738 (1967), and WIS. STAT. § 809.32.

[4] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

ineffective for failing to raise the issue of trial counsel's ineffectiveness.[5] Later, the trial court agreed to appoint an attorney for Guman at county expense.

¶9 The trial court held a ***Machner*** hearing, at which both Guman and his trial attorney testified. At its conclusion, the trial court denied Guman's motion claiming his trial attorney was ineffective.[6] Several months later, Guman, still represented by counsel, filed a supplemental brief claiming that there was no factual basis for the second count of second-degree sexual assault of a child and he renewed his motion that his trial attorney was ineffective. The trial court ordered the parties to brief the issue. However, before the briefing was completed, Guman's attorney petitioned to withdraw from the case due to the fact he was leaving the practice of law. The trial court permitted Guman's attorney to withdraw and appointed substitute counsel. New counsel then filed a motion that sought to reopen the postconviction motion claiming ineffectiveness of trial counsel. In his motion, he asked to supplement the record, and requested funds to hire an expert witness. In response, the trial court ordered briefs. Following the submission of briefs from both Guman and the State, the trial court denied Guman's original challenge to the complaint, finding that the complaint supported all five criminal charges, and denied the requests raised in his new counsel's motion. Shortly thereafter, Guman's attorney was relieved of his representation of Guman. This *pro se* appeal follows.

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[5] Despite ordering a ***Machner*** hearing, the trial court denied Guman's claim that trial counsel was ineffective for failing to file a motion challenging the complaint on grounds of multiplicity.

[6] On appeal, Guman has abandoned his claim that his original postconviction attorney was ineffective. Guman also sought a John Doe proceeding from the trial court, apparently believing that his trial attorney lied during the ***Machner*** hearing. The trial court denied his request and this court also denied his petition for a supervisory writ.

II. ANALYSIS.

A. Guman's attorney was not ineffective.

¶10 Guman claims that his trial attorney was ineffective for several reasons. First, he argues that his attorney failed to investigate whether he should have advanced a defense to the charges based upon the fact that Guman suffered from a mental disease or defect which would have relieved him of responsibility for his criminal actions and failed to investigate the defense of intoxication. *See* WIS. STAT. §§ 971.15 & 939.42.[7] Guman further contends that his attorney's

[7] WISCONSIN STAT. § 971.15 provides:

> **971.15 Mental responsibility of defendant. (1)** A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law.
>
> **(2)** As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
>
> **(3)** Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence.

WISCONSIN STAT. § 939.42 provides:

> **939.42 Intoxication.** An intoxicated or a drugged condition of the actor is a defense only if such condition:
>
> **(1)** Is involuntarily produced and renders the actor incapable of distinguishing between right and wrong in regard to the alleged criminal act at the time the act is committed; or
>
> **(2)** Negatives the existence of a state of mind essential to the crime, except as provided in s. 939.24 (3).

failure to do so prevented him from entering a knowing, intelligent, and voluntary waiver of his right to a jury trial. Further, he claims that because his attorney never explained to him the requirement that the sexual contact had to be done for the purpose of sexual arousal or gratification, he did not enter his pleas knowingly, intelligently, and voluntarily. He also faults his trial attorney for not challenging the charges on the grounds that they were multiplicitous.[8]

¶11 A defendant claiming ineffective assistance of counsel must establish that a defense attorney's performance was deficient, and that the deficient performance prejudiced the defense. ***State v. Allen***, 2004 WI 106, ¶26, 274 Wis. 2d 568, 682 N.W.2d 433 (citing ***Strickland v. Washington***, 466 U.S. 668, 687 (1984)). An attorney's performance is deficient when the attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Id.*** (citation and internal quotation marks omitted). Prejudice exists when there is "a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** (citations and internal quotation marks omitted). A claim for ineffective assistance of counsel fails if we conclude either that counsel's performance was not deficient or that the deficient performance did not prejudice the defense, and we may begin with either inquiry. ***State v. Johnson***, 153 Wis. 2d 121, 128, 449 N.W.2d 845 (1990) (quoting ***Strickland***, 466 U.S. at 697).

[8] In his brief, Guman argues that his trial attorney was ineffective for failing to file a motion seeking to suppress his confession. This issue was never raised in any of his postconviction motions and is deemed waived pursuant to ***State v. Rogers***, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) (failure to raise specific challenges in the trial court waives the right to raise them on appeal).

¶12 "Failure to raise an issue of law is not deficient performance if the legal issue is later determined to be without merit." ***State v. Wheat***, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441. The burden is on the defendant to show that a challenge that counsel did not make would have been successful. ***State v. Jackson***, 229 Wis. 2d 328, 344, 600 N.W.2d 39 (Ct. App. 1999). "A defendant who alleges that counsel was ineffective by failing to take certain steps must show with specificity what the actions, if taken, would have revealed and how they would have altered the outcome of the proceeding." ***State v. Byrge***, 225 Wis. 2d 702, 724, 594 N.W.2d 388 (Ct. App. 1999).

¶13 As noted, the trial court conducted a ***Machner*** hearing, at which both Guman and Guman's trial attorney testified. At its conclusion, the trial court denied the motion.

¶14 Guman first submits that his attorney was ineffective for failing to investigate his entering either a not guilty plea based on his mental illness or pursuing an intoxication defense. Our review of the record reflects neither plea would have withstood scrutiny.

¶15 Guman's trial attorney testified that he considered both of these defenses but ultimately rejected them. He did so based on a number of factors. First, he testified that Guman had recall of all the events that transpired, and nothing in his rendition of the events supported either defense. Indeed, his attorney pointed out that Guman later told him that he agreed with K.E.'s version of the events, except that he denied having threatened to kill her. His attorney remarked that the fact that Guman had used a ruse to lure the victim to his apartment and Guman's fleeing the scene were not consistent with either defense. Additionally, although a question was raised as to exactly when his trial attorney

obtained his medical and psychiatric history, his attorney testified he was aware of Guman's mental health history when he determined that neither defense was appropriate under the circumstances. The State argued in its brief:

> A successful NGI [(not guilty by reason of mental disease or defect)] plea would have required, not just proof, that Guman suffered from a mental illness, but that as a result "[he] lacked substantial capacity [either to] appreciate the wrongfulness of his … conduct or [to] conform his … conduct to the [requirements of] law." Wis. Stat. § 971.15(1). Similarly, a voluntary intoxication defense would have required evidence that Guman was intoxicated and as a result of his drugged condition, was so mentally impaired that he could not form the necessary intent. ***State v. Strege***, 116 Wis. 2d 477, 486, 343 N.W.2d 100 (1984). Guman does not offer any specific evidence that had counsel further investigated or secured an expert evaluation, the resulting evidence would have had any reasonable likelihood of either defense being successful.

(Bracketed material added.) We agree. Guman goes on at great length to describe his previous abuse of drugs and the disabling effects of his mental illness, but he is unable to establish that either defense would have been successful. Therefore, no prejudice has been shown. Consequently, we agree with the trial court's conclusion that his attorney was not ineffective for failing to pursue either defense.

¶16 Guman also contends that neither his trial attorney nor the court ever explained to him that the crime of sexual assault by sexual contact requires that the intentional touching be done for the purpose of sexual arousal or gratification. Thus, Guman claims that he did not enter his guilty pleas knowingly, intelligently, and voluntarily.

¶17 To enter a valid guilty plea, the trial court must comply with WIS. STAT. § 971.08. *See* ***State v. Bangert***, 131 Wis. 2d 246, 267-72, 389 N.W.2d 12 (1986).

> Whenever the [§] 971.08 procedure is not undertaken or whenever the court-mandated duties are not fulfilled at the plea hearing, the defendant may move to withdraw his plea. The initial burden rests with the defendant to make a *prima facie* showing that his plea was accepted without the trial court's conformance with [§] 971.08 or other mandatory procedures …. Where the defendant has shown a *prima facie* violation of [§] 971.08(1)(a) or other mandatory duties, and alleges that he in fact did not know or understand the information which should have been provided at the plea hearing, the burden will then shift to the [S]tate to show by clear and convincing evidence that the defendant's plea was knowingly, voluntarily, and intelligently entered, despite the inadequacy of the record at the time of the plea's acceptance.

Bangert, 131 Wis. 2d at 274 (citations omitted).

¶18 Here, the trial court admitted it failed to advise Guman that the crime of sexual assault by sexual contact included the element that the sexual contact had to be for the purpose of sexual arousal or gratification. However, Guman's attorney was quite insistent that this element had been explained to him.

¶19 At the ***Machner*** hearing, Guman's trial attorney testified:

> Q. Do you recall specifically whether you advised Mr. Guman of the existence of that element?
>
> A. I'm sure that I did. Do I have a specific recollection of it? Saying those words? No. But I'm sure I did.
>
> Q. Can you tell me when that conversation would ordinarily have taken place as part of your practice?
>
> A. At least twice, probably three times; once at the initial meeting when we went over the charges, once when we were talking about whether he wanted to proceed with the preliminary hearing or not, and then once when we went through the guilty plea questionnaire.

¶20 Guman claimed to have no memory of the guilty plea proceeding. As a consequence, the trial court discounted Guman's claim that he was unaware of this element, finding that Guman's attorney's testimony, combined with Guman's own statement to police that he had intended to masturbate had the assault been successfully completed, provided the necessary linkage that his sexual contact with K.E. was for sexual gratification purposes and that Guman was aware of this element. Because Guman claimed not to remember anything that occurred at the proceeding, he could not refute his trial attorney's testimony and it remained uncontroverted. As a result, we are satisfied that Guman was well aware of this requirement. Thus, his plea was entered knowingly, intelligently, and voluntarily.

¶21 Next, Guman faults his trial attorney for failing to challenge the complaint as being multiplicitous. The double jeopardy provisions of the state and federal constitutions prohibit the filing of multiplicitous charges. ***State v. Anderson***, 219 Wis. 2d 739, 746, 580 N.W.2d 329 (1998). Charges are multiplicitous when a single offense is charged in more than one count. ***Id.*** Determining whether multiple charges violate the constitutional protection against double jeopardy is a question of law that this court reviews *de novo*. ***State v. Kanarowski***, 170 Wis. 2d 504, 509, 489 N.W.2d 660 (Ct. App. 1992).

¶22 We are to apply a two-part test to determine whether a charge is multiplicitous. ***Anderson***, 219 Wis. 2d at 746. The first inquiry is "whether the charged offenses are identical in law and fact." ***Id.*** The second inquiry, which applies if the charged offenses are not identical in law or fact, focuses on "whether the legislature intended the multiple offenses to be brought as a single count." ***Id.***

¶23 Guman's four sexual-assault offenses (two separate charges for each incident) are not identical in fact or law. As charged, both offenses have as an element that the offender have sexual contact with the victim. However, the charge of second-degree sexual assault with the threat of use of force requires proof that the victim did not consent and that there existed a threat of the use of force. WIS. STAT. § 940.225(2)(a). On the other hand, the charge of second-degree sexual assault of a child obligates the prosecution to prove the victim's age, but not a lack of consent or the threat of force. WIS. STAT. § 948.02(2). Thus, the offenses are not identical in fact and law. Because the offenses are different in fact and law, a presumption arises that the legislature intended to permit cumulative punishments. ***State v. Beasley***, 2004 WI App 42, ¶7, 271 Wis. 2d 469, 678 N.W.2d 600.

¶24 Addressing the second inquiry, the presumption of legislative intent can be rebutted only by clear legislative intent to the contrary. ***Id.*** Four factors are considered in determining legislative intent: "(1) all applicable statutory language; (2) the legislative history and context of the statute; (3) the nature of the proscribed conduct; and (4) the appropriateness of multiple punishment[s] for the conduct." ***Id.***, ¶9 (citation and one set of quotation marks omitted). To rebut the presumption, the defendant must meet the burden by showing clear legislative intent in light of the four factors. ***Id.***, ¶10.

¶25 In ***State v. Sauceda***, 168 Wis. 2d 486, 489, 485 N.W.2d 1 (1992), the court held it was permissible for a defendant to be convicted of both sexual assault of a child and sexual assault of an unconscious person for the same act with the same victim. The ***Sauceda*** court also concluded that the nature of the proscribed conduct in the offenses demonstrated that the legislature intended multiple punishments. ***Id.*** at 499. Extrapolating from the case law, we are

satisfied that there is a distinction between the charge of sexual contact with a child and the charge of sexual contact with knowledge that the victim does not consent and is threatened with force. As a result, Guman has not met his burden of showing a clear legislative intent to prohibit multiple punishments. Thus, Guman's attorney was not ineffective for failing to file a motion on multiplicitous grounds, as such motion would have been denied.

B. The trial court neither erred nor erroneously exercised its discretion.

¶26 Next, Guman argues that the trial court erred in accepting his guilty pleas because at the time he was so over-medicated that he could not knowingly, intelligently, and voluntarily enter his pleas.[9] Guman also contends that the trial court erroneously exercised its discretion at sentencing by relying on improper factors, personalizing the proceedings, was prejudiced against him, and failed to give reasons for the consecutive sentences.

¶27 As noted, a plea will be considered manifestly unjust if it was not entered knowingly, voluntarily, and intelligently. ***State v. Giebel***, 198 Wis. 2d 207, 212, 541 N.W.2d 815 (Ct. App. 1995). Guman claims that the trial court should not have accepted his pleas because of the multiple medications he was on at the time of the guilty plea that rendered him unable to enter a plea. According to Guman, these medications were so disabling that he actually has no memory of the proceedings. The trial court denied this motion twice. Originally, the trial court stated at the conclusion of the ***Machner*** hearing that:

[9] Guman also contends that the trial court erred by failing to explain all the elements of sexual assault to him. This matter was addressed previously.

> Now, there was nothing that was asked of him that would indicate that he was so out of it in reading that whole thing so as he didn't understand what was going on. His answers were appropriate to the questions asked. To suggest that he didn't know what he was doing I think is simply untrue.

Later, in its written decision denying the postconviction motion filed by Guman's substitute postconviction counsel, the trial court opined:

> A reading of the plea transcript reveals that the defendant was lucid and had no problems understanding the court's questions. He never appeared incoherent or confused. He answered the court's questions appropriately and without hesitation. The court ascertained what medications the defendant was taking prior to coming to court, and the defendant told the court he was taking pain medication for his lower back and some psychiatric medications which, defendant said, did not affect his abilities to understand the proceedings or make a decision. There is every indication that the defendant was lucid and coherent when he entered his guilty plea, and there is no question in the court's mind that he did, in fact, enter his guilty plea knowingly, intelligently and voluntarily.

We agree. The record before us substantiates that Guman was not so overmedicated at the time he entered his pleas to render them unknowing, unintelligent and involuntary.

¶28 Finally, Guman challenges the trial court's sentencing decision. There is "a strong public policy against interference with the sentencing discretion of the trial court and sentences are afforded the presumption that the trial court acted reasonably." ***State v. Spears***, 227 Wis. 2d 495, 506, 596 N.W.2d 375 (1999) (citation and internal quotation marks omitted).

¶29 The sentencing court is obligated to consider three primary factors: "(1) the gravity and nature of the offense, including the effect on the victim, (2) the character and rehabilitative needs of the offender, and (3) the need to

protect the public." ***Id.*** at 507. The trial court may also consider, in connection with the three primary factors:

> the vicious and aggravated nature of the crime; the past record of criminal offenses; any history of undesirable behavior patterns; the defendant's personality, character and social traits; the results of a presentence investigation; the degree of the defendant's culpability; the defendant's demeanor at trial; the defendant's age, educational background and employment record; the defendant's remorse, repentance, and cooperativeness; the defendant's need for rehabilitative control; the right[s] of the public; and the length of pretrial detention.

State v. Echols, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

¶30 At sentencing, the trial court commented that it was not convinced of Guman's claim that the ingestion of drugs was responsible for his actions. The court pointed out that the crimes had been premeditated and, as a result, Guman had "messed a young girl's life up." The court observed that in committing this crime, Guman had violated his position of trust as a parent and the crimes were very egregious. The court also looked at Guman's past and noted that he had been convicted of exposing himself to minors. In sum, the trial court stated that it had to consider "the need to protect our society from any further conduct from [Guman] on this type of area" and had to consider "the deterrent effect and give [Guman] a sufficient punishment."

¶31 We are satisfied that the trial court considered the appropriate factors and explained its sentence, including its decision to impose consecutive sentences. The trial court was concerned that Guman posed a serious risk to young girls and was greatly in need of treatment. The trial court also determined that Guman should be severely punished for his actions. While the sentences are stiff, given

the trial court's reasoned explanation, we cannot say that the trial court erroneously exercised its discretion

¶32 For the reasons stated, this court affirms the trial court's judgment and orders.[10]

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.

[10] Guman also contends, in two short, undeveloped paragraphs, that pursuant to WIS. STAT. § 751.06 (2005-06), he should be given a new trial in the interest of justice. Section 751.06 (2005-06) does not bestow the authority on this court to grant a new trial in the interest of justice. Even if we were to assume Guman intended to reference WIS. STAT. § 752.35 (2005-06), which pertains to this court, because Guman's arguments are undeveloped, we decline to address this issue. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (reviewing court need not address "amorphous and insufficiently developed" arguments); ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (appellate court "cannot serve as both advocate and judge" by developing arguments for the parties).