

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 4, 2014

Diane M. Fremgen
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 Nos. 2013AP1829-CR
2013AP1830-CR**

**Cir. Ct. Nos. 2012CM1754
2012CM2488**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES E. GRANT,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Dane County:
STEPHEN E. EHLKE, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ In these consolidated appeals, James Grant appeals a circuit court order denying his postconviction motions for plea

¹ These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12).

withdrawal and other relief. Grant was convicted of two counts of retail theft and one count of disorderly conduct, all as a repeater. For the reasons explained below, this court rejects Grant’s challenge to the order, and affirms.

¶2 Grant is pro se and submitted as his appellate brief a handwritten document in a noncompliant format. The State responded, and moved to strike Grant’s brief. Grant replied and opposed the motion in two additional non-compliant documents.

¶3 We denied the State’s motion to strike in an order dated June 11, 2014, and stated the following as to Grant’s briefing:

[A]lthough Grant’s handwriting is difficult to read, his seven-page brief identifies three recognizable issues. Basically, Grant seeks to withdraw his plea and vacate his sentence based upon allegations that (1) there was a “special relationship” between the prosecutor and judge; (2) the prosecutor breached the plea agreement by providing information about the impact of the crime on the victim that undermined the sentence recommendation; and (3) the prosecutor provided inaccurate or incomplete proof of Grant’s prior convictions to support sentencing him as a repeat offender.

¶4 In that June 11 order, we also said that the first issue—the alleged “special relationship” between the prosecutor and the judge—was too insufficiently developed to warrant any response from the State or this court. As for the remaining two issues—whether the prosecutor breached the plea agreement and whether the prosecutor supplied insufficient proof of repeater status—we said that those issues were “sufficiently stated and responded to [by the State] that we conclude striking Grant’s initial brief is not warranted.”

¶5 Although Grant’s briefing may have been sufficient on those two issues to survive the State’s motion to strike, it is now clear after further

examination of Grant's briefs and a review of the record that Grant's arguments on these issues are so undeveloped and unclear that they do not warrant a response from this court. Grant's briefing on the issues is wholly lacking in any factual development supported by references to the record, and Grant draws no connection between the few facts he does allege and any applicable legal standards. Although Grant cites a number of cases and provides general legal propositions from those cases, Grant's arguments do not provide sufficient guidance as to what his specific arguments might be. For these reasons, this court rejects Grant's arguments. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (explaining why arguments were insufficiently developed and stating that the court of appeals need not address such arguments).

¶6 Additionally, Grant has failed to ensure that the record contains a transcript of the circuit court's oral ruling at the hearing on Grant's postconviction motions. Because the circuit court's written order refers back to the circuit court's oral reasoning at that hearing, Grant's failure to include the transcript makes it impossible for this court to review the circuit court's reasons for denying Grant's motions. The absence of this transcript is a second, independent basis on which this court rejects Grant's arguments. It is the appellant's duty to ensure that the record is complete, and this court assumes that missing material supports the circuit court's decision. *State v. McAttee*, 2001 WI App 262, ¶5 n.1, 248 Wis. 2d 865, 637 N.W.2d 774.

¶7 It is true that we may make allowances for pro se litigants, and we have done so here by, among other things, extending deadlines, reinstating Grant's appeals after he initially failed to pay the filing fee, and attempting to decipher all of Grant's handwriting even though some of it was very difficult to read. When it comes to the merits of a case, however, this court does not create issues or develop

arguments for a litigant. *State ex rel. Harris v. Smith*, 220 Wis. 2d 158, 165, 582 N.W.2d 131 (Ct. App. 1998). “We cannot serve as both advocate and judge.” *Pettit*, 171 Wis. 2d at 647.

¶8 Before concluding, this court observes that, although we did not identify such claims in our June 11, 2014 order, Grant may be making additional claims that his *Miranda* rights were violated and that he should receive relief in addition to plea withdrawal, including monetary relief. These claims suffer from the same problems as Grant’s other challenges to the circuit court’s order and need not be discussed further.

¶9 In sum, for all of the reasons stated above, this court affirms the circuit court’s order denying Grant’s motions for postconviction relief.

By the Court.—Order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4. (2011-12).

