COURT OF APPEALS
DECISION
DATED AND FILED

September 17, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2008 **Cir. Ct. No. 2007CF3279**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAYMOND L. MORRISON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MICHAEL D. GUOLEE, Judge. *Affirmed*.

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

¶1 PER CURIAM. Raymond L. Morrison, *pro se*, appeals a circuit court order denying his motion to compel postconviction counsel to turn over his "attorney-client" case file to him. Morrison contends the circuit court erroneously exercised its discretion. We disagree and affirm the order.

¶2 According to Morrison's statement of the case, he pled guilty to two counts of robbery with the use of force. Then, deciding his trial counsel and postconviction counsel were ineffective, Morrison decided to prosecute his appeal *pro se*. He wrote to appellate counsel to request all of his record so he could prosecute his appeal, but counsel only sent him two transcripts. Morrison filed the underlying motion to compel counsel "to release all of the record" because, he contends, he must have the complete trial record in counsel's possession in order to appeal his conviction. Denial of that record, Morrison claims, is a denial of his right to appeal, and entitles him to dismissal of his convictions.

¶3 The record reveals a slightly different sequence of events. Morrison did plead guilty to two counts of robbery with the use of force.[1] Postconviction counsel was appointed, and she pursued both postconviction relief and a direct appeal for Morrison. *See* ***State v. Morrison***, No. 2008AP3114-CR, unpublished slip op. (WI App May 19, 2009). Approximately three years later, in April 2012, Morrison began seeking his case file. He wrote to the public defender, who had appointed the private bar attorney to represent him; the public defender informed him that he would have to obtain the file directly from the attorney. Morrison also wrote to the Office of Lawyer Regulation (OLR).

¶4 On August 9, 2012, Morrison filed the underlying motion to compel in the circuit court. He claimed he had sent three letters to counsel with no response, and he listed all of the items he wanted to receive. On August 11, 2012, counsel wrote to Morrison; her cover letter indicates that multiple items were enclosed as requested, including several transcripts, and other items including the

[1] Contrary to the State's brief, the offense was not *armed* robbery with the use of force.

plea hearing transcript would be forthcoming. On August 15, 2012, OLR advised Morrison that it had been copied on counsel's August 11 correspondence. Based on the letter's contents, OLR declined to forward the matter for investigation. OLR further informed Morrison that if he required further review of that decision, he had to so request in writing within thirty days. On August 21, 2012, Morrison sent an "incomplete rec[ei]pt of case file" notice/motion to the circuit court, in which he indicated counsel had only sent him transcripts, asked the court not to dismiss his motion to compel, and expanded the list of things that he was looking for. The court received that notice on August 24, 2013.

¶5 On August 23, 2013, however, the circuit court denied the motion to compel. It explained, "This is a matter between the defendant and his former counsel in which the court will not intervene. The defendant may contact the Office of Lawyer Regulation in Madison. The defendant's alternative is to pay the fee for an open records request."

¶6 Motions to compel are committed to the circuit court's discretion. *See* ***Franzen v. Children's Hosp. of Wis., Inc.***, 169 Wis. 2d 366, 376, 485 N.W.2d 603 (Ct. App. 1992). Discretionary decisions are upheld if the circuit court applies the relevant law to facts of record using a process of logical reasoning. ***Id.*** Here, we discern no basis on which to reverse the circuit court.

¶7 First and foremost, Morrison does not directly address either of the circuit court's rulings: that the dispute can be referred to OLR or that Morrison can alternatively pay for an open records request. Instead, he simply asserts that

"the facts of the appellant's motion to compel are undisputed."[2] However, "when an appellant ignores the ground upon which the [circuit] court ruled and raises issues on appeal that do not undertake to refute the [circuit] court's ruling[,]" he cannot be heard to complain if the accuracy of those rulings is deemed conceded. *See* ***Schlieper v. DNR***, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

¶8 Specifically, Morrison does not develop any argument—legal or factual—to demonstrate that he is entitled to receive "all of the record." He cites to SCR 20:1.16(d), but does not even discuss the text of the rule, much less its application to his case.[3] Further, while we acknowledge that SCR 20:1.16(d) requires an attorney, upon termination of representation of a client, to "take steps to the extent reasonably practicable to protect a client's interests, such as … surrendering papers and property to which the client is entitled[,]" Morrison has not established a factual basis on which to believe that postconviction/appellate counsel possesses or is likely to possess all the "papers and property" that he seeks.[4] Moreover, SCR 20:1.16(d) is part of the Rules of Professional Conduct for attorneys. Those rules are enforced by the lawyer regulation system. *See* SCR 21.15(1); SCR 20:8.5(a). Even if Morrison established he was entitled to "all of the record," he has not explained why, if SCR 20:1.16(d) is the controlling

[2] It is not clear how Morrison concludes the facts of the motion are undisputed, though we suspect he deems them so because the State did not respond to the motion. However, Morrison does not establish that the State was obligated to respond to a motion to compel filed against Morrison's own attorney.

[3] Morrison also cites to WIS. STAT. RULE 809.15(1) (2011-12), but that rule merely indicates what the record on appeal should consist of.

[4] Morrison's request for "any and all" photographs of a lineup conducted by Milwaukee Police, for instance, suggests the possibility that no such photos actually exist. Counsel cannot be compelled to produce nonexistent items.

authority, referral to OLR is an inadequate remedy. We will not develop Morrison's argument for him. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶9 Secondly, Morrison mischaracterizes his case history by neglecting to mention his first appeal. We must point out, therefore, that contrary to the fundamental premise of this appeal, Morrison was not, and is not being, denied his right to directly appeal his conviction by his lack of documents. Rather, any challenges he might wish to make against his conviction now would be collateral attacks. Thus, this case is not like either of the two cases that Morrison cites—***Hardy v. United States***, 375 U.S. 277, 282 (1964) (indigent appellant or counsel entitled to full copy of transcripts at government's expense for prosecuting direct appeal, regardless of potential merit), or ***State v. Perry***, 136 Wis. 2d 92, 99, 401 N.W.2d 748 (1987) (defendant in criminal case entitled to full transcript or functional equivalent in order to satisfy right to meaningful appeal)—and neither cases applies here.[5]

By the Court.—Order affirmed.

This opinion shall not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).

[5] In any event, the remedy would at best be a new trial, not reversal of the convictions and dismissal of the charges. *See* ***State v. Perry***, 136 Wis. 2d 92, 99-100, 401 N.W.2d 748 (1987) ("The usual remedy where the transcript deficiency is such that there cannot be a meaningful appeal is reversal with directions that there be a new trial…. [However,] not all deficiencies in the record nor all inaccuracies require a new trial.").