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DISTRICT IV

November 28, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP965-CR

State of Wisconsin v. David H. B. Ennenga (L.C. # 2012CF237)

Before Blanchard, Kloppenburg and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

David Ennenga appeals from judgments of conviction for nine felony and misdemeanor offenses, including strangulation and false imprisonment. Ennenga argues that he received ineffective assistance of counsel at trial. Based upon our review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We reject Ennenga's arguments and affirm.

Ennenga was charged with eleven offenses following an attack on his estranged wife, D.E. At trial, D.E. testified that Ennenga violated a no contact order and entered her house late at night; slapped, punched, and hit her; put his hand around her throat with so much pressure that she had trouble breathing; and sexually assaulted her. A jury convicted Ennenga of nine counts, including strangulation and false imprisonment. Ennenga was acquitted of sexual assault and criminal damage to property. In Ennenga's present appeal, he argues that his attorney's performance at trial was deficient, thereby depriving him of his constitutional right to effective assistance of counsel.² Specifically, Ennenga argues that his attorney was deficient because he conceded guilt for some of the charged offenses during closing arguments and failed to object to a pattern jury instruction regarding reasonable doubt.

The State argues that Ennenga has forfeited his claims of ineffective assistance of counsel because he did not raise them in the circuit court. *See State v. Balliette*, 2011 WI 79, ¶29, 336 Wis. 2d 358, 805 N.W.2d 334 (citing *Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996)) (a claim of ineffective assistance of counsel cannot be reviewed on appeal absent a postconviction motion in the circuit court).

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² This is not Ennenga's first challenge to the judgment of conviction. Ennenga also filed a postconviction motion seeking sentence modification. However, Ennenga did not present any substantive challenge to his conviction. Instead, his attorney filed a no-merit notice of appeal. This court rejected the no-merit report and gave Ennenga time to file another postconviction motion or notice of appeal. This appeal followed.

Ennenga did not file a reply brief. We therefore deem him to have conceded the State's argument that Ennenga forfeited his claims of ineffective assistance of counsel because he did not raise those claims in the circuit court. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (an appellant's failure to respond in a reply brief to the arguments in a response brief may be deemed a concession).

Upon the foregoing reasons,

IT IS ORDERED that the judgments are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Clerk of Court of Appeals