

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 8, 2004

Cornelia G. Clark
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. 02-3117-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CF001125

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LARRY J.D. SPENCER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Vergeront, JJ.

¶1 PER CURIAM. Larry Spencer appeals from a judgment of conviction and an order denying postconviction relief. The issue is whether his trial counsel was ineffective by failing to seek a competency evaluation for Spencer before he pleaded no contest. We conclude he was not, and we affirm.

¶2 Spencer was convicted of nine counts of forgery. His postconviction motion alleged that his trial counsel was ineffective by failing to request a competency evaluation. The trial court held an evidentiary hearing on that issue, at which trial counsel testified. The court found that there was no reason to doubt Spencer's competency.

¶3 Competency to stand trial means possessing the mental capacity to understand the proceedings and assist in his or her own defense. WIS. STAT. § 971.13(1) (2001-02).¹ A competency evaluation is to be performed before trial whenever there is "reason to doubt" the defendant's competency. WIS. STAT. § 971.14(1)(a). If counsel has reason to doubt the defendant's competency and fails to bring it to the attention of the trial court, it is ineffective assistance of counsel. *State v. Johnson*, 133 Wis. 2d 207, 220-24, 395 N.W.2d 176 (1986). We assume, for purposes of this appeal, that this ineffective assistance analysis applies to cases that are resolved by the defendant's plea of guilty or no contest.

¶4 The dispositive issue in this case is whether trial counsel had reason to doubt Spencer's competency. Whether there is evidence giving rise to a reason to doubt competency is a question left to the sound discretion of the trial court. *State v. Weber*, 146 Wis. 2d 817, 823, 433 N.W.2d 583 (Ct. App 1988). Although *Weber* was a case involving a competency issue directly, rather than through an ineffective assistance claim, we see no reason why the same deference would not apply here. The trial court is reviewing the same factors regardless of the label and, in this case at least, the postconviction motion was decided by the same judge

¹ All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

who had observed and interacted with Spencer at the time he now alleges there was reason to doubt his competency. Accordingly, we review the court's decision for erroneous exercise of discretion.

¶5 We conclude that the trial court did not erroneously exercise its discretion. The court heard testimony from Spencer's trial counsel describing his interactions with and impressions of Spencer. Counsel did not believe there had been reason to doubt Spencer's competency, and he believed Spencer was able to understand and assist in the proceedings. Counsel testified that he believed Spencer was attempting to delay the case and otherwise "throw ... monkey wrenches into the system." After hearing this testimony, the court found that although Spencer had been a difficult client, there had been no reason for counsel to doubt his competency. The court considered the evidence before it, in light of applicable law, and reached a reasonable conclusion. Because counsel had no reason to doubt Spencer's competency, counsel's performance was not deficient when he did not raise that issue with the trial court. *See Johnson*, 133 Wis. 2d at 220-21 (it is deficient performance for counsel to fail to raise issue with trial court when counsel has reason to doubt client's competency).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

