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DISTRICT II

September 17, 2025

To:

Hon. Frank M. Gagliardi
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Jonathon Minkus
Electronic Notice

Sara Lynn Shaeffer
Electronic Notice

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

2024AP1538-CR State of Wisconsin v. Sufian N. Manya (L.C. #2006CF405)

Before Gundrum, Grogan, and Lazar, 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).

Sufian N. Manya appeals from a judgment of conviction imposing a sentence after the revocation of his probation. 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 (2023-24).[1] We affirm.

In 2007, Manya pled guilty to three counts of injury by intoxicated use of a vehicle as a habitual offender. On one count, the circuit court sentenced him to five years of initial

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

confinement and five years of extended supervision. The court withheld sentence on the other two counts, placing Manya on probation for three years on each count "consecutive to the service of the other sentences." Manya was also ordered to pay restitution of $150,000.

The Department of Corrections (DOC) revoked Manya's probation in 2022, at least in part because he was uncooperative with probation supervision and resistant to programming and treatment provided by the DOC. Manya returned to the circuit court for sentencing after revocation on the two remaining counts of injury by intoxicated use of a vehicle as a habitual offender. The court sentenced him to four years of initial confinement and three years of extended supervision, consecutive, on each of those two counts, a more severe sentence than either the DOC or the State recommended. Manya appeals.

Manya claims the sentence imposed by the circuit court upon revocation was "excessive" and that the court erroneously exercised its discretion in imposing it. He points out that the DOC's sentencing after revocation report writer recommended that the court sentence Manya to three to four years of initial confinement on each count, followed by two to three years of extended supervision, to run concurrently, and the State recommended three years of initial confinement on each count, followed by three years of extended supervision, to run consecutively.

Manya complains that the focus of the sentencing hearing was on his failure to pay restitution to the three victims in this case and that such attention did not include discussion about "why it was not paid" or whether he had "earned money that would have allowed him to pay restitution." According to Manya, the discussion at the hearing made it seem "that he [had] simply thumbed his nose at the victims." While acknowledging that he "described in some detail

[during allocution] how he was living hand to mouth barely making enough to meet his needs and that there simply was not any excess funds to pay towards restitution," he nevertheless complains that neither the State nor his counsel informed the circuit court that he was unable to pay toward restitution. He claims that, as a result, the imposed sentence was fueled "chiefly" by this failure to pay restitution, which resulted in an excessive sentence.

Manya also asserts, for the first time on appeal, that his counsel provided constitutionally ineffective assistance at his sentencing hearing by failing to present evidence "to explain the lack of restitution." *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Specifically, he complains that counsel "did not present any evidence … corroborat[ing] what [Manya] stated himself, to wit, that he lacked the financial wherewithal to have paid towards that restitution," and failed to introduce "evidence … of Manya's well-documented and at times profound mental illness," which would have "provide[d] a reasonable explanation (if not a defense) to the lack of restitution." The State asserts Manya has forfeited these arguments, and we agree.

A claim of ineffective assistance of counsel "cannot be reviewed on appeal absent a postconviction motion in the [circuit] court." ***State ex rel. Rothering v. McCaughtry***, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996). In particular, "[a] claim of inadequate … counsel is to be raised by a hearing in the [circuit] court, at which … counsel can testify concerning the reasons behind actions taken." ***State v. Mosley***, 102 Wis. 2d 636, 657, 307 N.W.2d 200 (1981). Here, Manya did not file a postconviction motion in the circuit court alleging ineffective assistance of counsel. In addition, he did not file a reply brief in this appeal and thus concedes the State's assertion that he failed to preserve an ineffective assistance claim due to his failure to raise it in the circuit court. *See* ***State v. Chu***, 2002 WI App 98, ¶41, 253 Wis. 2d 666, 643 N.W.2d 878 (argument raised in response brief and not disputed in defendant's

reply may be deemed admitted). Accordingly, we conclude that Manya has forfeited his ineffective assistance of counsel claim. *See* ***Rothering***, 205 Wis. 2d at 677-78.

Additionally, we also conclude that Manya failed to sufficiently develop an argument in support of his excessive sentence claim. On appeal, we do not consider insufficiently developed arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed."); ***Clean Wis., Inc. v. PSC***, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 ("We will not address undeveloped arguments."). As the appellant, Manya bears the burden of showing us how the circuit court erred. *See* ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. Because he failed to sufficiently develop a legal argument to demonstrate this, he is unable to and does not meet that burden.

Moreover, as the State points out in its response brief, citing ***State v. Grindemann***, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507, Manya's sentence "is well within the maximum sentence …, and it is therefore presumptively not excessive." The State also correctly points out that, despite Manya's contention, his failure to pay restitution was not the sentencing after revocation court's "overriding focus." Rather, the court emphasized the severity of Manya's OWI offenses, which caused substantial injuries to three individuals, the need to protect the public, and his character, including that he failed to accept responsibility for his criminal conduct to the point of fleeing the country prior to his original sentencing.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals