COURT OF APPEALS
DECISION
DATED AND FILED

January 28, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP339-CR **Cir. Ct. No. 2003CF133**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EARL D. PHIFFER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: MICHAEL J. BYRON and MICHAEL R. FITZPATRICK, Judges. *Affirmed.*

Before Dykman, P.J., Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Earl D. Phiffer appeals a judgment of conviction for one count each of obstructing an officer, fleeing an officer, and second-degree recklessly endangering safety as a repeat offender. He also appeals the order

denying his motion for postconviction relief. Phiffer argues that the circuit court erred by not allowing him to be present at his trial, by not allowing him to hire an attorney to represent him at trial, by not allowing him to represent himself at trial, by allowing the State to amend the criminal complaint after he entered his plea, by not properly applying a penalty enhancer, and by not granting him sentence credit for time he spent in jail while this matter was pending. He also alleges ineffective assistance of counsel. Because we conclude that none of these issues has merit, we affirm the judgment and order.

Background

¶2 In 2003, Phiffer was charged with one count each of obstructing an officer, fleeing or attempting to elude an officer, and second-degree reckless endangerment, all as a repeat offender. Over the course of the next five years, Phiffer had five different attorneys appointed to represent him. On more than one occasion, Phiffer asked to have new counsel appointed to represent him shortly before a scheduled trial date. At these hearings, Phiffer would often be extremely argumentative with the court, and he would either walk out of the courtroom or have to be removed. Eventually, Attorney Josh Klaff was appointed to represent him. Five days before the start of trial, Phiffer again asked for a new attorney to represent him or to be allowed to represent himself. The court denied the motion at that time, stating that, if Phiffer represented himself, he would alienate the jury.

¶3 Three days before the start of trial, Phiffer again objected to having Attorney Klaff represent him. At the start of the hearing, counsel stated that he was representing Phiffer, to which Phiffer responded: "You're not even my counsel, man." Counsel then attempted to explain to the court his attempts to talk with Phiffer. Phiffer said: "I want a change of venue. I don't even know why I'm

in this courtroom, man." When the judge tried to talk to him, Phiffer said, "I don't got nothing to say, man," "I don't got nothing to say, Judge Byron. You know how I feel about the situation," and "I ain't going to argue with you, man. Come on, man," and Phiffer walked out of the courtroom. The court allowed Phiffer a few minutes to calm down, and discussed with counsel how to proceed. The State noted that Phiffer had managed to delay the start of the trial for nearly five years, and asked that the case proceed to trial. The court had Phiffer brought back in to explain the alternatives to him. The following exchange then took place:

> THE COURT: Mr. Phiffer, the court's just going to tell you what your alternatives are here.
>
> MR. PHIFFER: I know my alternatives, man. I want a change of venue, man.
>
> THE COURT: And I deny your motion.
>
> MR. PHIFFER: You ain't – you ain't – you ain't going to do nothing with me, man. Man, look at my motion right here, man. This is my motion right here. This is my motion.
>
> THE COURT. All right –
>
> MR. PHIFFER: You can't honor this motion –
>
> THE COURT: – bring up –
>
> MR. PHIFFER: – and dismiss my case right now in court today? I want a change of venue. I don't got to speak. My motion speak for itself. Show me a law. Show me a law that say that just because what you say that's why we can't (unintelligible). The probable cause don't say nothing like that, man. There is not enough evidence to even bind me over for this case.
>
> THE COURT: Okay.
>
> MR. PHIFFER: This man put three – three charges on – inside my criminal complaint that aren't even supposed to be there. I'm showing you Supreme Court case law stating this. You all can't even bind me over for this case, man.

THE COURT: All right.

MR. PHIFFER: Come on. You bind me over on what you say. The probable cause don't say that. Show me a Wisconsin state statute that say that a judge can bind you over on what you think. You can't do that, Judge Byron.

THE COURT: All right –

MR. PHIFFER: I'm not going to let you all railroad me again, man.

THE COURT: All right –

MR. PHIFFER: Come on, man.

(Mr. Phiffer speaks simultaneously.)

THE COURT: Listen.

MR. PHIFFER: Come on, man. We ain't got nothing to talk about, man.

THE COURT: You have two choices –

MR. PHIFFER: I don't got nothing, man.

(Mr. Phiffer speaking simultaneously.)

THE COURT: Wait.

(Mr. Phiffer speaking simultaneously.)

THE COURT: Mr. Phiffer –

(Mr. Phiffer speaking simultaneously.)

THE COURT: Now, don't make it harder on yourself. You've got two choices. You can either come and sit and listen to the trial and participate in the trial, or you can sit out at the sheriff's department and watch the trial on TV. And if they have to restrain you to have you in there to watch the trial, you will be.

THE COURT: Do you understand? Well, it's obvious he won't participate in the colloquy to see if he wants to proceed by himself or wants to proceed by an attorney. So I'm ordering that he proceed by an attorney.… I think the record does show that he's had five or six different attorneys in this procedure. It's an '03 case.

We've had motions. He won't cooperate with his attorney. He's walked out of court a couple times –

MR. PHIFFER: (Unintelligible.)

THE COURT: – here.

MR. PHIFFER: I ain't trying (unintelligible).

THE COURT: Just wait, Mr. Phiffer.

(Mr. Phiffer speaking simultaneously.)

MR. PHIFFER: I don't got nothing to talk to you about, man.

THE COURT: I'm not talking –

MR. PHIFFER: Just leave me alone, man. I ain't broke no law, man. I don't want to talk to this man.

THE COURT: And you can –

MR. PHIFFER: I don't want to talk to you, man. (Unintelligible) nothing, man (unintelligible) my life.

THE COURT: And –

(Mr. Phiffer interrupts and speaks simultaneously.)

MR. PHIFFER: Ahhhhh.

THE COURT: Here's what –

MR. PHIFFER: Ahhhh.

(Mr. Phiffer speaking simultaneously.)

MR. PHIFFER: Whatever, man. Whatever, dude. (Unintelligible) in this courtroom (unintelligible) change of venue.

THE COURT: Okay, bring him back –

MR. PHIFFER: I don't want no lawyer from none of you all, no lawyers, no nothing, man.

THE COURT: Bring him back on Monday [for trial] –

> MR. PHIFFER: Man, you ain't bringing me back on nothing.
>
> THE COURT: – at 8:30.
>
> MR. PHIFFER: You ain't bringing me back on nothing.

The court ultimately determined that Phiffer had not waived his right to counsel and that the better procedure was to keep Mr. Klaff as his attorney "and do the best we can."

¶4 On the day the trial was set to start, the court noted that, the last time the case was called, Phiffer had refused to answer questions, had tried to put his hands over his ears so he wouldn't hear what the court had to say, had tried to leave before the proceedings were concluded, and continued to insist that his attorney did not represent him. The court further noted that before Phiffer could represent himself, the court would have to engage him in a colloquy, and Phiffer would not participate. The court concluded that it was not going to allow Phiffer to disrupt the proceedings. The court decided that Phiffer would be confined to a room in the jail where he could watch the proceedings by video camera and communicate with his attorney by telephone. That way, Phiffer would be able to hear the proceedings, but the jury would not be able to hear him. The court concluded that, with the attitude Phiffer had displayed, "it would be even more prejudicial [to him] to allow the jury to view him." The court discussed with the parties what to tell the jury, and they agreed that the court would just say that Phiffer was not there and that was something that had been agreed to by all. Rather than begin the trial, the matter was adjourned.

¶5 On the day trial finally started, Phiffer appeared before the court by video camera from the jail. He again asked for a new lawyer or to represent

himself. He told the court that his family was going to retain a lawyer to represent him, and he refused to go to trial. Phiffer then insisted that he be present in the courtroom. The court eventually agreed to allow Phiffer to come back into the courtroom. When he came into the courtroom, Phiffer again refused to cooperate. He again asked for a new lawyer, said he wanted to call his mom, said he was not feeling well, said he was not going to trial, and then said all he wanted to do was go back to prison so that he could finish writing his petition for review. Phiffer then left the courtroom "on his own volition." The court then said:

> It's just obvious that Mr. Phiffer isn't going to sit there and be quiet and follow any rules that the court might set. And, again, he only wants to say what he wants to say and will not respond to questions. So there's no way that the court feels by his conduct that the court could even consider allowing him to appear pro se, even with stand-by counsel. The only way this trial is going to happen is if we proceed with him not in the courtroom but able to hear, and give him an opportunity to consult with [his counsel] at various stages. And that's what we're going to do.

Jury selection then took place with Phiffer watching from the jail.

¶6 The next day, Phiffer was allowed to return to the courtroom. His counsel informed the court that Phiffer had said that his plan was to "delay the trial so that he can privately retain a lawyer." The court stated that the trial was not going to be delayed, and warned Phiffer that, if he acted out at all, the court would take a recess to return him to jail. Phiffer continued to insist that he be given a new attorney. His lawyer noted that this opened the door for a mistrial motion, and the State also noted a concern about a mistrial. The court agreed that Phiffer would not be allowed to create a mistrial by his own actions.

¶7 Phiffer remained in the courtroom until the State rested. At this point, he stated his desire to testify. Defense counsel was concerned about Phiffer

testifying, but the court ruled that Phiffer had the right to testify. Phiffer continued to argue with the court outside the presence of the jury, until he took the stand. Defense counsel called Phiffer to testify, and asked him a few questions. The State then began its cross-examination. The third question involved a statement Phiffer had given:

> Q. Do you recall giving a written signed statement to a Jennifer Hervat?
>
> A. Huh?
>
> Q. Did you give a signed statement to Jennifer Hervat?
>
> MR. PHIFFER: Objection.
>
> [THE PROSECUTOR:] I think your counsel –
>
> MR. PHIFFER: Objection.
>
> THE COURT: I'll order you to answer.
>
> [THE PROSECUTOR:]
>
> Q Did you give a signed statement to Ms. Hervat where you indicated that at 5:40 a.m. January 10th, 2003 my friend came to my house on Harrison and picked me up?
>
> MR. PHIFFER: Objection. In State v. Fish, 20 Wis. 2d 431 –
>
> THE COURT: Wait. Mr. Phiffer, this is just factual issues.
>
> MR. PHIFFER: They can't bring nothing up. This don't pertain to the case, Your Honor. This don't pertain to this case.
>
> THE COURT: I got copies. You can argue that later, but the court is the judge of the law.
>
> MR. PHIFFER: No, the jury is.
>
> THE COURT: The jury is to disregard any comment.

MR. PHIFFER: The jury is the fact-finder of the case. The D.A. or Mr. Klaff can't bring up no other cases or statement that's not pertaining to this – this case.

THE COURT: Will you –

MR. PHIFFER: I got state law.

THE COURT: Will you answer any more questions?

MR. PHIFFER: Objection. I got something to say to the jury. They are the fact finders of the case.

THE COURT: Will you answer any more –

MR. PHIFFER: Objection to that.

THE COURT: Will you – the objection is overruled. You are ordered to answer.

MR. PHIFFER: Objection.

[THE PROSECUTOR:]

Q. Have you been convicted of a crime, sir?

A. Objection.

Q. Is it true you have been convicted of a crime 13 times?

THE COURT: Are you going to answer any other questions?

MR. PHIFFER: I would like to speak to the jury.

THE COURT: I understand. But are you going to answer any questions because we are just wasting our time.

MR. PHIFFER: Yes.

THE COURT: Okay. Ask the questions again.

[THE PROSECUTOR:] Thank you, Your Honor.

The prosecutor then continued to try to get Phiffer to answer questions about the statements he had given, but Phiffer refused. The court again asked Phiffer if he was going to answer any more questions.

> MR. PHIFFER: Your Honor, sir, he can't bring up no evidence. He can't bring up nothing that's not pertaining [to] this case. That's what you told me. Did you tell me that?
>
> THE COURT: Are you going –
>
> MR. PHIFFER: Your Honor, sir, did you tell me that I can't – that I can't say nothing to the jury?
>
> THE COURT: The jury can go to the jury room.
>
> MR. PHIFFER: They the fact finders of the case.
>
> THE COURT: Don't discuss the case.
>
> MR. PHIFFER: They the fact finders of the case. I want to let the jury know what's going on.
>
> (Jury begins to exit the courtroom).
>
> MR. PHIFFER: I am asking for [a] mistrial if I can't speak on the stand. He can't bring up nothing that's not pertaining [to] this case. He can't bring up no statements, no nothing. You all know this.
>
> ….
>
> MR. PHIFFER: I am asking for a mistrial. The jury got to hear everything. In State v. Hicks it says that in cases such as this we must depend upon the jury to deliver justice to maintain their integrity of our system of criminal justice.
>
> THE COURT: We've got –
>
> MR. PHIFFER: Jury must be afforded the opportunity to hear and evaluate such critical and material evidence on a critical issue that is later determined to be inconsistent with the facts. Only then can we say with confidence that justice has been prevailed at. They got to hear everything.
>
> THE COURT: The jury is not here.

The court and Phiffer continued in this vein for a little while, and the court told Phiffer to return to his seat.

> MR. PHIFFER: I want to speak to the jury.
>
> THE COURT: I understand.
>
> MR. PHIFFER: I got a right to speak to the jury. Can I speak to the jury?
>
> THE COURT: No.
>
> MR. PHIFFER: Can I ask for a mistrial?
>
> THE COURT: Sure. I denied your motion.
>
> MR. PHIFFER: I want the jury to know all this what I'm fitting to say. This is not my lawyer. I been [firing] him three months ago.
>
> THE COURT: Okay.
>
> MR. PHIFFER: I have been [firing] him three months ago. You all strapped me in a chair yesterday and had me – I want – I want – look.
>
> THE COURT: You can either stay here or go back to the Sheriff's Department.
>
> MR. PHIFFER: Look, Mama. These people had me strapped up in a chair yesterday and had this man pick a jury trial without me being there, Mama. Under the Wisconsin 971.04 defendant to be present, the defendant shall be present at the [arraignment], at trial, during voir dire of the jury trial, at any evidentiary hearing, at any view by the jury, when the jury returns its verdict, at the pronouncement of judgment and imposition of sentence, at any other proceeding when ordered by the court. My equal protection laws were violated. Because the defendant was not here when you all strapped me in a chair, forced me against my will to be – to be appointed with this counsel that I fired three months ago. You all can't do that. Equal protection right was violated.
>
> THE COURT: You have had your say.
>
> MR. PHIFFER: Jury got to hear this. I want to be in court at every court entry. This is not my lawyer.

> THE COURT: Go back and sit down.
>
> MR. PHIFFER: This is not my jury. This is not my lawyer. I want a change of venue. I want the jury to hear everything I got to say.
>
> THE COURT: Mr. Phiffer.
>
> MR. PHIFFER: This is a jury trial.
>
> THE COURT: We are going to have to take you back to the Sheriff's Department.
>
> MR. PHIFFER: Mama, these people is denying me my rights, Ma. Mama, do you see this? Just listen, Mama. Mama, if you would listen, Mama. You came here and told this man – listen – that you fitting to get me a paid attorney and they steady denying me saying I can't get a paid attorney.
>
> THE COURT: Mr. Phiffer, do you want to leave voluntarily?
>
> MR. PHIFFER: I want a new lawyer. This is not my lawyer. I been [firing] him three months ago. It's on record. I want the jury to hear all this. I been asking for change of venue three months ago. I come down here. You all forced me to come to court with this man, put me in a chair, man, that's unconstitutionalized, man. I want the jury to hear this. I want a mistrial. I am not going to the jury with him. I want everything on the record.
>
> THE COURT: All right. You can take him back to the Sheriff's Department. We will do it on video.

Phiffer continued to argue and protest as they led him out of the courtroom. The trial ended, and the jury found Phiffer guilty of the crimes charged.

¶8 Phiffer then filed several motions seeking postconviction relief, raising many of the issues he raises on appeal. The circuit court denied the motions without holding a hearing.

Discussion

¶9 Three of Phiffer's arguments are related to his behavior in the courtroom, both pretrial and during the trial. Others relate to charging and sentencing. We address each argument in the sections below.

1. Removing Phiffer From the Courtroom

¶10 Phiffer argues that the circuit court erred by not allowing Phiffer to be present during his entire trial. We disagree.

¶11 "It is essential to the proper administration of criminal justice that dignity, order, and decorum be the hallmarks of all court proceedings in our country." ***Illinois v. Allen***, 397 U.S. 337, 343 (1970). "We understand that 'trial judges confronted with disruptive, contumacious, stubbornly defiant defendants must be given sufficient discretion to meet the circumstances of each case' and that '[n]o one formula for maintaining the appropriate courtroom atmosphere will be best in all situations.'" ***State v. Haste***, 175 Wis. 2d 1, 30-31, 500 N.W.2d 678 (Ct. App. 1993) (quoting ***Allen***, 397 U.S. at 343), *abrogated on other grounds by* ***State v. Klessig***, 199 Wis. 2d 397, 404, 544 N.W.2d 605 (Ct. App. 1996).

> Therefore, we cannot prescribe the precise solution for a never-ending variety of defendants and disruptions that plague our "palladiums of liberty." ***Allen***, 397 U.S. at 346. We believe, however, that skillful trial courts can consider numerous options to assure courtroom control *and* guarantee a defendant's Sixth Amendment rights.

Haste, 175 Wis. 2d at 31. These options include "binding and gagging a disruptive defendant, citing him or her for contempt, or removing a defendant from the courtroom." ***Id.*** at 31 n.7. "[A] defendant can lose his right to be present at trial if, after he has been warned by the judge that he will be removed if he

continues his disruptive behavior, he nevertheless insists on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with him in the courtroom." ***Allen***, 397 U.S. at 343.

¶12 The record, as quoted above, amply demonstrates that Phiffer engaged in disruptive and disrespectful conduct that affected the dignity, order, and decorum of the court. He refused at times to participate, to answer questions, to listen to the judge, or to obey the judge's rulings. He insisted on talking when told not to, he stormed out of the courtroom, and flatly refused to abide by the rules of procedure. He told the judge that he would behave, and then refused to do so. He told his counsel that he intended to disrupt the trial to obtain a mistrial, and attempted to do just that. The court was very patient with Phiffer, and warned him that his behavior would result in him being removed from the courtroom. He was removed, but was allowed to watch and listen to the proceedings by video and to communicate with his counsel. The court allowed him back into the courtroom, where he remained for part of the trial until he, once again, engaged in disruptive and disrespectful behavior in an apparent attempt to obtain a mistrial. Based on this record, we conclude that the circuit court acted properly when it had Phiffer removed from the courtroom during his trial.[1]

2. Phiffer's Requests To Represent Himself Or To Retain Counsel

¶13 Phiffer also argues that the circuit court erred when it would not let him represent himself, and when it denied his request to have the start of trial

[1] In a different section of his brief, Phiffer suggests that he was denied his right to consult with his attorney during trial. The record, however, does not support his assertion. Phiffer clearly was not happy about having the attorney represent him, but there is nothing to suggest that Phiffer was denied access to his attorney.

delayed so that he could retain counsel. He frames this partially as a claim that his counsel was ineffective for representing him once he had said he did not want the attorney to represent him.

¶14 The Sixth Amendment right to representation, whether by counsel or pro se, is an essential element of due process. U.S. CONST. amend. VI and XIV, § 1; WIS. CONST. art. I, § 7. While a defendant has the constitutional right to be represented by appointed counsel in cases in which the possible penalty is incarceration, a defendant also has a constitutionally protected right to proceed pro se. ***State v. Klessig***, 211 Wis. 2d 194, 201-03, 564 N.W.2d 716 (1997). The right to proceed pro se, however, is not absolute. ***State v. Oswald***, 2000 WI App 3, ¶28, 232 Wis. 2d 103, 606 N.W.2d 238 (Ct. App. 1999). When a defendant asks to proceed pro se, the circuit court must insure that the defendant: "(1) [is] knowingly, intelligently and voluntarily waiv[ing] the right to counsel, and (2) is competent to proceed pro se." ***Klessig***, 211 Wis. 2d at 203. If these two conditions are not satisfied, the circuit court must prevent the defendant from self-representation because to do otherwise would deny the defendant the constitutional right to counsel. ***State v. Ruszkiewicz***, 2000 WI App 125, ¶26, 237 Wis. 2d 441, 613 N.W.2d 893. If these conditions are satisfied, the circuit court must allow the defendant to represent himself or herself, because to do otherwise would deny the defendant the constitutional right to self-representation. ***Id.***

¶15 The record in this case demonstrates that the circuit court attempted to conduct a colloquy with Phiffer to establish whether he waived his right to counsel. The record firmly establishes that Phiffer did not wish to participate in this colloquy and did not wish to represent himself. What he continually asked the court was to be allowed to retain counsel. The court, after allowing at least four attorneys to withdraw over the course of five years, would not allow Phiffer to

delay the trial any further, and denied Phiffer's request for a continuance to obtain new counsel.

¶16 We conclude that the circuit court properly denied Phiffer's request to represent himself. Phiffer's demeanor in the many pretrial proceedings, as well as during the trial itself, showed both that he did not waive his right to counsel and that he was not able or willing to competently represent himself. Phiffer's actions suggest that his main purpose was to delay and disrupt the trial. He tried many tactics, many of which were successful. After five years, the circuit court decided that it was time to have the trial, and properly denied Phiffer's requests.

¶17 Phiffer also asserts that the circuit court erred when it denied his request to allow him to retain counsel. "Whether counsel should be relieved and a new attorney appointed in his or her place is a matter within the trial court's discretion." ***State v. Lomax***, 146 Wis. 2d 356, 359, 432 N.W.2d 89 (1988). When reviewing the circuit court's determination, this court should consider: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case. ***Id.*** At the time of this request, Phiffer had already had at least five separate attorneys appointed to represent him, and it was unlikely new counsel would be appointed to represent him. Phiffer made the request shortly before trial, which had been delayed for nearly five years, was set to start. We conclude that the circuit court properly exercised its discretion when it denied Phiffer's request to have his counsel withdraw so he could retain counsel.

3. Ineffective Assistance Of Counsel

¶18 Phiffer also argues that his counsel was ineffective for continuing to represent him when Phiffer wanted to represent himself or retain counsel. Because we have concluded that the circuit court acted properly when it denied Phiffer's requests to retain counsel, represent himself, or have new counsel appointed to represent him, we also conclude that his trial counsel was not ineffective when counsel, at the court's order, continued to represent Phiffer at trial.

4. Phiffer Was Properly Charged And Sentenced As A Repeat Offender

¶19 Phiffer alleges, in effect, that he was improperly sentenced as a repeat offender. In support of his argument, he cites to ***State v. Volk***, 2002 WI App 274, 258 Wis. 2d 584, 654 N.W.2d 24, for the proposition that penalty enhancers do not apply to truth-in-sentencing cases. ***Volk***, however, does not support this proposition. The court there held that penalty enhancers cannot be applied to the extended supervision portion of a bifurcated sentence. ***Id.***, ¶35. The sentence the court imposed here, however, was within the penalties allowed for the substantive offenses without the enhancer. The penalty enhancer was not applied to the extended supervision portion of the sentence. We conclude that Phiffer was not improperly sentenced as a repeat offender.[2]

[2] Phiffer also asserts that the criminal complaint was improperly amended after he entered his plea. The record shows, however, that Phiffer entered his plea *to* the amended complaint.

5. Sentence Credit

¶20 Phiffer argues that he is entitled to sentence credit for the time spent in jail on a separate offense. To be entitled to sentence credit, a defendant must prove that the custody for which he or she seeks credit resulted from "'the occurrence of a legal event, process, or authority which occasions, or is related to, confinement on the charge for which the defendant is ultimately sentenced.'" ***State v. Villalobos***, 196 Wis. 2d 141, 146, 537 N.W.2d 139 (Ct. App. 1995) (citation omitted). The burden is on the defendant to establish both custody and its connection to the course of conduct for which sentence was imposed. ***Id.*** at 148.

¶21 When the circuit court sentenced Phiffer, it found that he was not entitled to sentence credit, but gave his counsel the opportunity to prove otherwise. Phiffer raised this issue in one of his motions for postconviction relief in which he also alleged that the circuit court erred by imposing consecutive sentences. Although it is not obvious from the motions Phiffer filed in the circuit court, it appears from defense counsel's comments at sentencing that these two arguments may be interdependent. The circuit court did not grant him a hearing on his motion concerning his sentences because "specific facts and legal arguments [had] not been stated to show that there [was] any basis for the claim for relief." We conclude that Phiffer did not meet his burden of establishing that he was entitled to sentence credit.

Conclusion

¶22 For the reasons stated, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).