COURT OF APPEALS
DECISION
DATED AND FILED

March 19, 2013

Diane M. Fremgen
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. 2012AP55 **Cir. Ct. No. 2006CF379**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDRES ROMERO-GEORGANA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Andres Romero-Georgana appeals an order[1] denying his WIS. STAT. § 974.06 postconviction motion without a hearing. The motion alleged ineffective assistance of trial and postconviction counsel because trial counsel failed to advise Romero-Georgana of the possibility of deportation upon his no contest plea to sexual assault of a child and his postconviction counsel was ineffective for failing to argue ineffective assistance of trial counsel on that basis. Because we conclude the circuit court properly denied the motion without a hearing, we affirm the order.

BACKGROUND

¶2 The complaint charged Romero-Georgana with sexually assaulting his girlfriend's six-year-old daughter. Romero-Georgana told the mother that what he did was wrong and he should not have done it. The mother turned over to the police the victim's pants, which had what appeared to be a semen stain. Romero-Georgana waived his right to a preliminary hearing and, pursuant to a plea agreement, entered a no-contest plea. Under the terms of the agreement, the State would not file any additional charges based on the victim's statements depicting other sexual offenses, and the State would make no specific recommendation at sentencing. The plea forms, which were provided in English and Spanish, notified Romero-Georgana that if he is not a citizen of the United States, his plea could result in deportation, the exclusion of admission to this country, or the denial of naturalization under federal law. However, the court did

[1] The notice of appeal also purports to appeal the judgment of conviction. Because an appeal from an order under WIS. STAT. § 974.06 is not governed by WIS. STAT. RULE 809.30, the judgment of conviction is not the subject of this appeal. All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

not orally advise Romero-Georgana of the deportation consequences of his no-contest plea as required by WIS. STAT. § 974.08(1)(c). The court accepted the plea and sentenced Romero-Georgana to twelve years' initial confinement and four years' extended supervision.

¶3 In Romero-Georgana's first postconviction proceedings, he was represented by attorney Suzanne Hagopian. She argued the sentencing court failed to consider the sentencing guidelines as required by ***State v. Grady***, 2007 WI 81, ¶44, 302 Wis. 2d 80, 734 N.W.2d 364. This court reversed the judgment and remanded the matter for resentencing.

¶4 After substitution of judge, the court imposed a sentence of twenty years' initial confinement and eight years' extended supervision. In Romero-Georgana's second postconviction proceedings, he was represented by attorney Tajara Dommershausen, who filed a postconviction motion alleging ineffective assistance of counsel based on the request to substitute judge. The circuit court denied the motion and Dommershausen filed a no-merit report. This court limited the review to issues arising out of the resentencing hearing, specifically disallowing issues relating to the initial plea hearing, and summarily affirmed the judgment. After the Wisconsin Supreme Court denied review of that decision, Romero-Georgana brought the present postconviction motion arguing ineffective assistance of his trial and postconviction counsel. The circuit court denied the motion without a hearing, concluding the motion was "nothing more than … bare bones conclusory allegations based on [Romero-Georgana's] opinions" and, although the motion alleges ineffective assistance of postconviction counsel (presumably Hagopian), all of his specific allegations relate to the performance of his trial counsel.

DISCUSSION

¶5 Romero-Georgana's brief on appeal is substantially more thorough than the postconviction motion and affidavit he filed in the circuit court. That is significant because the initial question is whether Romero-Georgana is entitled to a hearing on his motion. The motion must include sufficient facts to allow the reviewing court to meaningfully assess the defendant's claims. ***State v. Allen***, 2004 WI 106, ¶¶21-23, 274 Wis. 2d 568, 682 N.W.2d 433. When a defendant has had a previous postconviction motion and appeal, his postconviction motion must establish sufficient reason for the court not to apply the procedural bar to successive postconviction motions set out in ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 181-82, 517 N.W.2d 157 (1994). Romero-Georgana's postconviction motion attempts to circumvent the procedural bar by alleging ineffective assistance of postconviction counsel. However, as the circuit court noted, other than the bare bones allegation, the motion and affidavit do not examine postconviction counsel's performance.

¶6 When appellate counsel is allegedly ineffective for failing to pursue certain issues on appeal, a defendant must demonstrate that the ignored issues were stronger than those actually presented. ***Smith v. Robbins***, 528 U.S. 259, 288 (2000). In this case, the issue raised by Hagopian in the initial postconviction motion and appeal resulted in reversal of the judgment of conviction and a remand for resentencing. Romero-Georgana does not establish that raising the deportation issue would have been stronger than the issue actually presented. He does not explain why he would have given up a favorable plea agreement and risked additional charges to take his chances at trial had he been properly advised about the possibility of deportation. He would have faced the same deportation

consequences if convicted after trial and it appeared the State had a strong case against him.

¶7 His motion also fails to address the strategic reason for Hagopian's choice of issues. She reasonably calculated that resentencing would likely produce a lesser sentence or the same sentence. On the other hand, had she succeeded in vacating the plea, the State would have been free to bring additional charges and could have recommended the maximum on the existing charge, sixty years' imprisonment. Because Romero-Georgana's motion does not establish or even allege any reason for disregarding the ***Escalona-Naranjo*** prohibition against successive postconviction motions, his motion does not allege sufficient facts which, if true, would entitle him to relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996).

By the Court.—Order affirmed.

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