COURT OF APPEALS
DECISION
DATED AND FILED

June 23, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP2615-CR **Cir. Ct. No. 2002CF2286**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LANDRIS T. JINES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: M. JOSEPH DONALD, Judge. *Affirmed*.

Before Dykman, Lundsten and Higginbotham, JJ.

¶1 PER CURIAM. Landris Jines appeals a judgment convicting him of attempted first-degree intentional homicide while armed, and possession of a firearm by a felon, both as a party to the crime and both as a habitual offender. Jines also appeals an order denying postconviction relief. In the postconviction

proceeding, Jines filed a motion alleging ineffective assistance of trial counsel. The issue on appeal is whether the trial court properly denied that motion without a hearing. We affirm.

¶2 The complaint alleged that Jines fired six shots at Kishon Bartee, with bullets striking Bartee in the chest and arm. Jines' first trial ended in a hung jury. The evidence against Jines included eyewitness testimony, the victim's identification of Jines, and the fact that immediately after the shooting the victim identified his assailant by Jines' nickname.

¶3 The State presented the same evidence at the second trial, plus testimony from a man named Turon Griffin. Griffin testified that he was a close associate of Jines and heard Jines confess to the shooting, and that Jines also asked Griffin after the shooting to stop using Jines' nickname because it was "hot." Griffin also testified to accompanying Jines on a trip out of state shortly after the shooting, suggesting that Jines left Milwaukee to evade detection and capture.

¶4 The jury found Jines guilty in his second trial. In his postconviction motion, Jines alleged that trial counsel performed ineffectively by failing to call two witnesses to impeach Griffin. Jines alleged that one witness would testify that Griffin attempted to send a letter to Jines asking Jines to tell Griffin what to say in his testimony. Jines alleged that the other witness, Griffin's sister, would testify that Griffin actually knew nothing about the crime. Griffin's sister would say that a police detective told Griffin he would help Griffin with other matters if Griffin testified against Jines. Griffin's sister would also say that Griffin was the type of person who only looked out for himself.

¶5 The trial court did not convene a hearing on the postconviction motion. The court concluded that even if the two impeachment witnesses testified

as indicated, the failure to call them could not have prejudiced Jines because: (1) the evidence against Jines was overwhelming, even without Griffin's testimony, and (2) the jury learned that Griffin's credibility was suspect because Griffin had numerous convictions and he admitted to negotiating concessions in another case in exchange for his testimony against Jines.

¶6 To prove ineffective assistance of counsel, a defendant must show not only that counsel's performance was deficient, but that counsel's errors or omissions prejudiced the defense. ***State v. Pitsch***, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985). Prejudice results when counsel's errors deprived the defendant of a fair trial with a reliable result. *See* ***id.*** at 640-41. Stated otherwise, the defendant must show that counsel's errors had an actual, rather than conceivable, effect on the outcome of the proceeding. ***Strickland v. Washington***, 466 U.S. 668, 693 (1984). Whether an attorney's conduct is prejudicial to the defense is a question of law that we review *de novo*. ***State v. Brunette***, 220 Wis. 2d 431, 446, 583 N.W.2d 174 (Ct. App. 1998). A trial court need not conduct an evidentiary hearing on an ineffectiveness claim if the facts alleged in the motion do not warrant relief, even if they are true, or if the record conclusively resolves the issue against the defendant. *See* ***State v. Bentley***, 201 Wis. 2d 303, 309-11, 548 N.W.2d 50 (1996).

¶7 The record here supports the trial court's view that the two witnesses would not have made a difference. The two witnesses would not have added significantly to information the jury otherwise had undercutting Griffin's credibility. The jury learned that Griffin had eight prior convictions. The jury knew that Griffin had negotiated with the authorities to provide testimony against Jines in exchange for assistance on a pending prosecution against Griffin. In addition, nothing offered in the defense motion would have undercut evidence

showing that Griffin was a friend of Jines and that they had traveled together out of state after the shooting. The proffered testimony indicating that Griffin communicated to Jines asking Jines to tell Griffin what Griffin should say if he testified was just as likely to help the prosecution as to help the defense. It fits the prosecution theory that Griffin and Jines were friends and that Griffin would have lied for Jines, except for the fact that Griffin could help himself by testifying against Jines.

¶8 Moreover, even if Griffin had been successfully impeached by the two missing witnesses, the remaining evidence regarding Jines' guilt was overwhelming. The victim identified Jines as the shooter. So did his accomplice. Other witnesses, both disinterested and interested, gave testimony of Jines' presence at the crime scene and Jines' involvement in the shooting.

¶9 Jines contends that the fact his first trial ended without a verdict indicates that the evidence was not overwhelming without Griffin. We have no information as to why the first trial ended as it did. A jury can be hung by one unreasonable person. We will not speculate as to why the first trial ended in a hung jury and use that speculation here.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2003-04).