

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 11, 2005

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. 2003AP2907

Cir. Ct. No. 1998CF1365

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY T. REED,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN A. FRANKE, Judge. *Affirmed.*

Before Dykman, Higginbotham and Lundsten, JJ.

¶1 PER CURIAM. Timothy Reed appeals an order denying his motion for postconviction relief brought pursuant to WIS. STAT. § 974.06 (2003-04).¹ He argues that he received ineffective assistance of trial counsel.² We affirm.

¶2 To substantiate a claim of ineffective assistance of trial counsel, a defendant must prove that counsel performed deficiently and that he or she was prejudiced by counsel's performance. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052 (1984). To prove deficient performance, a defendant must show specific acts or omissions of counsel that are "outside the wide range of professionally competent assistance." *Id.* at 690. To prove prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "It is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693. The defendant's burden is to show that counsel's errors "actually had an adverse effect on the defense." *Id.*

¶3 Reed contends he received ineffective assistance of counsel because his trial counsel did not object to testimony by two police officers at trial recounting statements made by two witnesses, James and Karen Bracken. Reed contends that his counsel should have objected: (1) when Detective Eric Moore testified that James Bracken, a friend of the victim Reggie Hicks, told him that

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² Reed also argues that he received ineffective assistance of appellate counsel because his appellate counsel failed to raise the issue of ineffective assistance of trial counsel on direct appeal. Because we reject Reed's claim of ineffective assistance of trial counsel, we also reject the claim of ineffective assistance of appellate counsel.

Reed shot Hicks and the shooting was connected to a robbery; and (2) when Detective Gary Schuster testified that Karen Bracken told him about an argument Reed and Hicks had several days before the shooting. Reed argues that the trial court's admission of the police officers' testimony, which he characterizes as hearsay, allowed the testimony of James and Karen Bracken to be restated to the jury, filtered through the police detectives, which bolstered the credibility of their testimony.

¶4 Assuming these were inadmissible statements to which counsel should have objected, an issue we need not decide, we reject Reed's claim that he received ineffective assistance of counsel because he has not shown prejudice. James Bracken testified that he saw Reed shoot at Hicks. He also testified that Hicks had committed a robbery and testified that he believed that Reed had shot Hicks in retaliation for that robbery. Karen Bracken, who is James' cousin and was Hicks' girlfriend, testified that Reed and Hicks had an argument about two weeks before the murder. She also testified that Hicks told her that Reed "was going around telling people he was going to kill [Hicks]."

¶5 Given this testimony, the statements made by the detectives did not prejudice Reed because they contained information that had already been heard by the jury. The jury was aware from the testimony of James and Karen Bracken that robbery was a potential motive for the shooting and they already were aware that there had been a fight between Reed and Hicks. The detectives were simply explaining what they had been previously told by James and Karen Bracken, not vouching for the veracity of their statements. In sum, Reed has not shown a reasonable probability that, but for admission of the detectives' testimony to which he objects, the result of the proceeding would have been different. *Id.* at 694.

By the Court.—Order affirmed.

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

