COURT OF APPEALS
DECISION
DATED AND FILED

December 13, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP1028-CR **Cir. Ct. No. 2002CF2767**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARREN E. BROOKINS,

DEFENDANT-APPELLANT.

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

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. Darren E. Brookins entered an ***Alford***-no contest[1] plea to one count of first-degree sexual assault of a child. In a postconviction motion to withdraw his plea, Brookins contended that his trial counsel was ineffective. Specifically, Brookins asserted that counsel did not investigate the possibility of an intoxication defense, did not explore the viability of a not guilty by reason of mental disease or defect plea, and did not provide him with a complete copy of discovery materials. The court denied the motion without a hearing. Brookins appeals. We affirm.

BACKGROUND

¶2 The criminal complaint alleged that on November 9, 2001, Brookins had sexual contact with M.K., who was eight years old at the time. The criminal complaint states that M.K. said that Brookins "had about three beers" that evening.

¶3 At the outset of the plea hearing, Brookins's trial attorney advised the court that Brookins "[d]oes not remember" the incident and "[w]ants to take advantage of the offer from the State." Later in the colloquy, the court informed Brookins that his plea would "give up the right to raise any lawful defense" he might have to the charge, and Brookins told the court that he understood. When asked if he disputed the allegations of the criminal complaint, Brookins said, "[a]ll I really remember is drinking and my brother was there … we were all drinking." Trial counsel confirmed that "[b]y all accounts, [Brookins] was drunk." The court then asked counsel whether she had "discussed the defense of intoxication" with

[1] ***North Carolina v. Alford***, 400 U.S. 25 (1970). When a defendant enters an ***Alford*** plea, he concedes that the State could present sufficient evidence of guilt while not admitting that he committed the charged offense.

Brookins, and counsel replied that she had "talked about all defenses that I thought could be possible." The court then said to Brookins, "I don't mean to suggest that that's a valid defense here. But it is a possible issue that's raised when someone says they were drunk. And that's one of the defenses you give up when you plead guilty. Do you understand that?" Brookins replied, "Yes, sir."

¶4 In his postconviction motion to withdraw his plea, Brookins stated that the reports and statements "clearly indicate" that he "was intoxicated at the time of the offense" and therefore, "[t]he intoxication defense should have been considered." Brookins also stated that counsel "was aware of [his] mental illness," and he faulted counsel for not discussing the possibility of a not guilty by reason of mental disease or defect (NGI) plea with him. In his postconviction affidavit, Brookins averred that his trial counsel "did not discuss the possibility of a not guilty by reason of mental disease or defect plea" and "did not investigate the possibility of a[n] intoxication defense … [al]though the discovery indicated that I was intoxicated at the time this offense was alleged to have occurred." Brookins also averred that trial counsel did not provide him with a copy of the discovery materials.

DISCUSSION

¶5 A defendant seeking to withdraw a guilty plea after sentencing must show, by clear and convincing evidence, that a manifest injustice would result if the motion to withdraw is denied. ***State v. Bentley***, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). The manifest injustice test is satisfied by a showing that the defendant received ineffective assistance of counsel. ***Id.*** A defendant claiming ineffective assistance of counsel must allege facts showing "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded

guilty and would have insisted on going to trial." ***Id.*** at 312 (*quoting* ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985)). In order to show that a failure to investigate was prejudicial, a defendant must show both what the investigation would have revealed and how it would have altered the outcome of the proceedings. *See* ***State v. Flynn***, 190 Wis. 2d 31, 48, 527 N.W.2d 343 (Ct. App. 1994).

¶6 The circuit court may deny a postconviction motion without an evidentiary hearing if the facts alleged in the motion, even if true, "do not entitle the movant to relief; if one or more key factual allegations in the motion are conclusory; or if the record conclusively demonstrates that the movant is not entitled to relief." ***State v. Allen***, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433 (footnote omitted). A defendant must allege more than self-serving conclusions. ***Bentley***, 201 Wis. 2d at 316. Rather, a defendant must "allege facts which allow the court to meaningfully assess" his contention. ***Id.*** at 318.

¶7 We review the circuit court's decision not to hold an evidentiary hearing on a postconviction motion using a mixed standard of review. ***Id.*** at 310. Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law to be reviewed de novo. ***Id.*** If the motion fails to allege sufficient facts, then the court has the discretion to deny the postconviction motion without a hearing and we review that determination under the deferential erroneous exercise of discretion standard. ***Id.*** at 310-11.

¶8 We agree with the circuit court's determination that Brookins's postconviction allegations were vague and conclusory. Therefore, the court properly denied the motion without a hearing. Although Brookins alleged that he was intoxicated and suggested that counsel did not adequately investigate an intoxication defense, he did not allege what additional investigation would have

revealed or how it would have affected the case. *See* ***Flynn***, 190 Wis. 2d at 48. Brookins did not allege that, but for counsel's claimed inadequate investigation, he would not have pled guilty and would have insisted on going to trial. ***Bentley***, 201 Wis. 2d at 312. And, the record of the plea hearing contravenes Brookins's allegation. During the plea colloquy when the potential of an intoxication defense was addressed, counsel indicated that she had "talked about" the defense, and Brookins expressly acknowledged that his guilty plea would waive the defense.

¶9 As for the possibility of an NGI plea, Brookins alleged only that he had a mental illness and that trial counsel knew of that illness. Brookins did not provide any additional "facts which [would] allow the court to meaningfully assess" his contention that trial counsel was ineffective for not discussing the NGI defense with him. *See* ***id.*** at 318. And, as above, Brookins did not allege that but for counsel's claimed inadequate discussion of an NGI defense, he would not have pled guilty and would have insisted on going to trial. *See* ***id.*** at 312.

¶10 Lastly, Brookins did not identify how trial counsel's alleged failure to provide a copy of discovery materials affected his decision to plead guilty. Brookins did not identify any aspect of the discovery materials that, had he known of, would have caused him to proceed to trial rather than plead guilty. *See* ***id.***

By the Court.—Judgment and order affirmed.

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