COURT OF APPEALS
DECISION
DATED AND FILED

October 12, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP2651-CR **Cir. Ct. No. 2004CF1183**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LATOYA ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: DAVID T. FLANAGAN III, Judge. *Affirmed*.

Before Dykman, Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. Latoya Robinson appeals a judgment convicting her of fraud and an order denying her motion for postconviction relief. She argues that she received ineffective assistance of trial counsel. We affirm.

¶2 Robinson received childcare assistance from the State for her three children. Robinson left her job on October 7, 2002, but continued to receive childcare assistance over the next several months while she was unemployed. The State charged her with one count of fraud for failing to inform her caseworker within ten days of when she lost her job, which resulted in Robinson receiving $7900 in childcare assistance that she should not have received. *See* WIS. STAT. § 49.95(9) (2003-04)[1] (a person receiving public assistance must inform the authorities of any change of circumstances relevant to the receipt of assistance within ten days). At trial, Robinson contended she told her caseworker, Jessica Miller, of her job loss and Miller told her she could continue to receive childcare assistance while she looked for another job. Miller testified that Robinson did not inform her of the job loss until January 2003. The jury convicted Robinson of the charge.

¶3 Robinson contends she received ineffective assistance from her trial counsel. A person alleging ineffective assistance of counsel must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). An attorney's performance is deficient if the attorney "'made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment.'" ***State v. Allen***, 2004 WI 106, ¶26, 274 Wis. 2d 568, 682 N.W.2d 433 (quotations and citations omitted). "The defendant must also show the performance was prejudicial, which [means that there is] 'a reasonable probability

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

that, but for counsel's error, the result of the proceeding would have been different.'" ***Id.***

¶4 Robinson first contends that her trial attorney failed to investigate her case. She contends that, had her attorney investigated, her attorney would have discovered that Robinson was eligible under the Wisconsin Works (W2) program for childcare funding while unemployed as long as she was searching for a job. Robinson appears to contend that her eligibility for W2 is important because: (1) she would be excused for failing to inform Miller of the job loss because she was eligible for benefits under W2, and thus received no overpayments; and (2) the fact that she was eligible for W2 shows that Miller was somehow misinformed, and thus not credible.

¶5 The primary problem with Robinson's argument is that she did not show at the ***Machner*** hearing that she sought and obtained authorization for childcare assistance while searching for a job under W2, thus making her eligible for continued childcare funding. The documents that Robinson introduced as exhibits at the hearing did not even show that Robinson was enrolled in W2 at the time of her job loss; they showed only that Robinson was enrolled in W2 about six months before and several months after her job loss. Because Robinson did not show that she received authorization for childcare funding while searching for a job under W2, she cannot show that her failure to inform Miller of her job loss resulted in no overpayments to the State. As for Robinson's claim that the W2 eligibility made Miller less credible, there is no basis for this argument. Miller testified that Robinson did not report her job loss. The jury believed her. Robinson's alleged W2 eligibility is beside the point.

¶6 Robinson also contends that her attorney should have attempted to impeach Miller with a police report in which Miller purportedly stated that she met with Robinson in person on October 18, 2002.[2] At trial, Miller testified that she could not recall whether she met with Robinson in person on October 18 or whether she spoke with her over the phone, though she believed from looking at her work notes that Robinson came in person to meet with her. Robinson's attorney could not have impeached Miller with the police report because Miller freely admitted at the time of trial that she could no longer recall the specifics of her contact with Robinson on that date. Because Miller stated that she could not remember, her testimony was not inconsistent with the police report.

¶7 Robinson also contends counsel was ineffective "because she failed to call a witness after bringing that witness to the jury's attention." Counsel said at voir dire that she "may" call Robinson's sister, Norlisha Robinson. Counsel never said that she was definitely going to call Norlisha Robinson. There was no prejudice to Robinson based on the fact that counsel suggested before the trial began that Norlisha Robinson may be a witness.

By the Court.—Judgment and order affirmed.

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

[2] The police report was not admitted into evidence at trial or at the ***Machner*** hearing.