COURT OF APPEALS
DECISION
DATED AND FILED

November 6, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2155 **Cir. Ct. No. 2003CF718**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREA D. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed*.

Before Higginbotham, P.J., Vergeront and Bridge, JJ.

¶1 PER CURIAM. Andrea Williams, pro se, appeals an order denying his motion for postconviction relief brought pursuant to WIS. STAT. § 974.06

(2005-06).[1] He argues that he received ineffective assistance of postconviction counsel during his direct appeal. We affirm.

¶2 Williams first argues that he received ineffective assistance of postconviction counsel because his attorney did not argue during the direct appeal that his trial counsel had a conflict of interest in representing Williams. First, we note that Williams does not adequately explain why he believes there was a conflict of interest. Although an attorney who worked at the same firm as Williams's trial counsel had represented the victim's family in the past, Williams has not explained how this impaired his attorney's ability to impartially assist Williams, particularly where Williams explicitly waived the potential conflict of interest in open court. In addition, Williams's postconviction counsel explained in a letter that she sent to Williams that she had several valid strategic reasons for not arguing that trial counsel had a conflict of interest:

> I have several reasons for not raising this claim. First, you have told me that when you called your lawyer, many times [the victim] was in the office. He told me that is a lie. I do not want to question your lawyer on the stand and have him say that you are a liar as that will taint all other issues. Second, even if there was a conflict of interest, I see no way in which your lawyer's handling of the case was affected. [The victim] was actually almost an advocate for you in your case, and I can see why your lawyer would not want to attack her too strongly on cross-examination. After all, as you will recall, she asked the judge to give you a much lighter sentence. Finally, I just don't see the conflict of interest. I see no reason why the firm could not represent you in a criminal case as well as [the victim's] family in a non-criminal matter.

[1] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Because Williams's attorney had valid strategic reasons for not raising the conflict-of-interest issue despite Williams's desire that she do so, we reject the argument that counsel performed deficiently by failing to raise this argument. *See* ***State v. Evans***, 2004 WI 84, ¶30, 273 Wis. 2d 192, 682 N.W.2d 784 (a defendant does not have the right to insist that particular issues be raised on appeal), *abrogated on other grounds by* ***State ex rel. Coleman v. McCaughtry***, 2006 WI 49, ¶¶26-29, 290 Wis. 2d 352, 714 N.W.2d 900.

¶3 Williams next argues that his postconviction counsel was ineffective for failing to argue that trial counsel was ineffective for not objecting to the submission of first-degree recklessly endangering safety as a lesser-included offense. We reject this argument. The evidence adduced at trial supported the submission of a verdict question on first-degree recklessly endangering safety. The evidence showed that Williams stabbed the victim in the back with a steak knife, causing her injury and narrowly missing vital organs. Counsel aptly defended Williams by arguing that the court should also submit second-degree recklessly endangering safety to the jury, although the jury decided Williams was guilty of first-degree recklessly endangering safety. Because the evidence supported submission of the charge, counsel did not perform deficiently by failing to object to submission of the charge to the jury.

¶4 Finally, Williams argues that postconviction counsel should have argued that the circuit court erred in excluding testimony from the victim regarding Williams's intent to kill her. On the State's motion, the court precluded the defense from questioning the victim about her opinion of Williams's intent to kill her. However, the court allowed the defense to ask the victim questions about what was said and done by Williams during the attack. Testimony in the form of an opinion by a lay witness is admissible under WIS. STAT. § 907.01 if the opinion

is rationally based on the witness's perception and helpful to a clear understanding of the witness's testimony regarding a fact in issue. However, we conclude that the circuit court reasonably exercised its discretion in not allowing the victim to testify about her opinion of Williams's intent because what Williams intended was a factual question for the jury to decide. Moreover, even if the circuit court had erred in excluding the victim's testimony on intent, any error would have been harmless. Intent to kill was not an element of first-degree recklessly endangering safety, the crime for which Williams was ultimately convicted.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.(2005-06).