

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 16, 2009

David R. Schanker
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. 2008AP633-CR

Cir. Ct. No. 2005CF287

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES L. HEGNA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: TIMOTHY M. DOYLE, Judge. *Affirmed.*

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

¶1 PER CURIAM. Charles Hegna appeals a judgment convicting him of fleeing an officer while operating a vehicle, possessing methamphetamine, possessing methamphetamine paraphernalia, and bail jumping. He also appeals an

order denying him postconviction relief. The issue is whether he received effective assistance from trial counsel. We affirm.

¶2 The State charged Hegna with eleven criminal counts in four separate Barron County prosecutions. Attorney John Schneider represented him in all of his cases. Before his trial the State offered a series of plea bargains, each of which Hegna declined. The State's final offer gave him the opportunity to plead to the most serious charge he faced, conspiracy to manufacture or deliver methamphetamine, in exchange for dismissal and read-in of the remaining ten counts, including all of those he faced in this case. Later, in postconviction testimony, Schneider gave his view that the offer Hegna refused would have been very beneficial because it allowed Hegna to plead to a felony count on which he was probably facing conviction anyway, and to avoid probable conviction on the charges in this case. Nevertheless, Hegna turned down this last offer and took this case to trial, resulting in conviction on four of the counts.

¶3 In his postconviction motion Hegna alleged that Schneider provided him insufficient information and advice regarding the State's plea offer and, had Schneider performed effectively in that regard, Hegna would have accepted the offer. After hearings on the matter, at which Hegna and Schneider testified, the trial court made findings of fact and conclusions of law, and denied the motion. On appeal Hegna challenges two of the trial court's findings of fact, and contends that Schneider's testimony establishes as a matter of law that he provided ineffective assistance.

¶4 To demonstrate ineffective assistance of counsel, a defendant must show counsel's performance was deficient and that the deficiency prejudiced the defense. *State v. Jeannie M.P.*, 2005 WI App 183, ¶6, 286 Wis. 2d 721, 703

N.W.2d 694. A lawyer's performance is deficient if counsel's conduct "falls below 'an objective standard of reasonableness.'" *Id.*, ¶7. To demonstrate prejudice, a defendant must show a reasonable probability of a different result, but for counsel's errors. *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Deficient performance and prejudice both present mixed questions of fact and law. *Jeannie M.P.*, 286 Wis. 2d 721, ¶6. We uphold the circuit court's factual findings unless clearly erroneous. *State v. Thiel*, 2003 WI 111, ¶21, 264 Wis. 2d 571, 665 N.W.2d 305. Whether counsel's performance is deficient or prejudicial is a question of law we review de novo. *Jeannie M.P.*, 286 Wis. 2d 721, ¶6.

¶5 Hegna first contends that the trial court's postconviction decision included the clearly erroneous finding that Schneider told Hegna that the State's final offer was the best Hegna could hope to achieve. As Hegna notes, Schneider could not specifically remember telling Hegna that he could not get a better deal. However, Schneider testified that he would have told Hegna that in the course of their discussion of the offer. He added that "there is no question in my mind that he would have known my opinion [that it was as good a deal as he could get] from the way I presented it to him." That testimony provided sufficient evidence for the trial court's finding.

¶6 Hegna also contends that the trial court clearly erred by finding that Schneider discussed with Hegna the testimony Schneider expected the State to present against him on the conspiracy charge. Schneider testified that he twice discussed with Hegna the police reports in the conspiracy case. He added that with regard to each of the State's witnesses, "I kind of said to him, this is what they are going to testify to. This is what they are going to say at trial...." He reported that Hegna responded with comments of his own on each witness. That

testimony provides sufficient if not overwhelming support for the trial court's finding.

¶7 Hegna's principal argument on appeal concerns the extent of counsel's duty to advise the defendant whether to accept a plea offer. This court has stated that

[T]he effective-assistance-of-counsel right applies to advice as to whether a defendant should accept or reject a plea bargain ... those enmeshed in the gears of the criminal justice system need advice and guidance - not only in the selection and execution of trial strategies but also in the decision of whether to forego a trial by pleading guilty (or one of its many variants).

State v. Fritz, 212 Wis. 2d 284, 293, 569 N.W.2d 48 (Ct. App. 1997) (citations omitted). In Hegna's view, *Fritz* stands for the proposition that Schneider had an affirmative duty to advise Hegna to accept the State's final plea offer. However, Schneider never advised Hegna that he should take the deal because "I do not recommend to a client whether they should take a deal or not. That's their decision." Essentially, Schneider explained that he limited his role to presenting the facts, and letting the client evaluate his or her options from those facts.

¶8 We conclude that Schneider did not have a duty to advise Hegna to accept the State's plea offer. The duty addressed in *Fritz* requires counsel to provide sufficient advice and information about a plea offer to allow an informed decision, which is what Schneider did. According to the trial court's findings of fact which we have upheld, and those which are uncontested, Schneider conveyed to Hegna the details of the offer and his opinion that the offer was the best Hegna could get. Schneider also gave Hegna sufficient facts to meaningfully and accurately assess his chances at trial, both in this case and on the conspiracy

charge, should he refuse the offer.¹ In doing so Schneider fulfilled his duty under *Fritz* to provide advice and guidance about the plea offer.

¶9 We acknowledge that Hegna cites federal cases holding that in some circumstances counsel has a duty to advise a defendant whether to accept a plea bargain. We are not persuaded by those cases that we should adopt the same rule in Wisconsin.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

¹ Schneider testified that he did not know how he could have been any clearer to Hegna about Hegna's poor chances at trial in this case.

