

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 13, 2003

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 Nos. 02-2730-CR
02-2731-CR
02-2732-CR**

**Cir. Ct. Nos. 00-CF-2453
01-CF-130
00-CM-4451**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAURICE D. HARRIS,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Dane County: ROBERT DeCHAMBEAU, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Lundsten, JJ.

¶1 PER CURIAM. Maurice Harris, pro se, appeals judgments convicting him of felony forgery, felony bail jumping, misdemeanor disorderly conduct, misdemeanor obstructing an officer and misdemeanor bail jumping, all as

a repeater. He also appeals an order denying his postconviction motion. Harris contends his trial counsel ineffectively represented him and that he should be allowed to withdraw his no contest pleas. We affirm.

¶2 Harris first contends his trial counsel was ineffective. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that the performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if the defendant makes an inadequate showing on one. *Id.* at 697. To demonstrate prejudice, the 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. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* We affirm the circuit court's findings of fact unless they are clearly erroneous, but the determination of deficient performance and prejudice are questions of law that we review without deference to the circuit court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

¶3 We focus on the prejudice element. Harris contends that his trial counsel was ineffective for not making a discovery demand from the prosecution and for failing to investigate his case. After hearing testimony and argument at the postconviction motion hearing, the circuit court found that trial counsel had received the entire case file from the prosecution and had reviewed it extensively with Harris. Harris was not prejudiced by counsel's failure to file a motion to compel discovery because one was not needed. As for Harris's claim that counsel did not adequately investigate, Harris has not explained how additional investigation would have changed the outcome, especially in light of the fact that

he was caught on videotape committing the crime and there was other compelling evidence against him. Because Harris has not shown that he was prejudiced, we reject his claim that he received ineffective assistance of trial counsel. *See Strickland*, 466 U.S. at 697.

¶4 Harris next contends that he should be allowed to withdraw his no contest plea to forgery because the circuit court did not establish a factual basis for it and did not inform him of the nature of the charge. Harris did not raise these arguments in his postconviction motion or the amendment to it. Therefore, we will not consider these claims on appeal. *See State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 677-78, 556 N.W.2d 136 (Ct. App. 1996).¹

¹ Although Harris did not argue that *he should be allowed to withdraw his plea* because there was no factual basis, he did argue that *counsel was ineffective* for not realizing that there was no factual basis for the forgery. He argued that there was no factual basis for the forgery charge because the forged signature on the authorization slip was illegible. Harris contended that he could not be charged with forgery unless the signature could be identified as representing to be that of the rightful owner of the credit card. Harris was, however, identified on videotape as the individual signing the authorization slip. The owner of the card also testified that the last time he had the card was in Harris's presence.

By the Court.—Judgments and order affirmed.

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

