

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2004

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 No. 02-3112-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CF000165

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALGEN M. LAMON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: MICHAEL J. BYRON, Judge. *Affirmed.*

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

¶1 PER CURIAM. Algen Lamon appeals from a judgment convicting him of kidnapping and operating a motor vehicle without the owner's consent, both counts as a party to a crime and as a repeat offender. He also appeals an order denying his postconviction motion. The issue is whether Lamon's trial counsel ineffectively represented him. We affirm.

¶2 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. Whether counsel's performance was deficient and whether counsel's actions prejudiced the defense are questions of law that we review without deference to the trial court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

¶3 We focus on whether counsel performed deficiently. Lamon argues that his trial counsel should have moved to sever the charge of possession of a firearm by a felon, of which he was found not guilty. He contends the charge should have been severed because, by virtue of the charge, the jury was informed he had previously committed a felony, which may have prejudiced the jury against him. We reject this line of argument because Lamon's counsel had a reasonable strategic reason for not moving to sever the charge. Lamon's counsel explained at the postconviction motion hearing that he did not move to sever the charge because Lamon intended to testify on his own behalf regarding an alibi, which would have allowed the State to introduce evidence that Lamon had previously been convicted of a crime. Had Lamon testified as he originally planned, evidence of his past crime would have been introduced, so severing the charge would have been of little benefit.

¶4 Lamon counters that there was "no downside" to moving to sever, so it should have been done. We conclude, however, that there *was* a downside. Lamon would have had to subject himself to jeopardy before a jury two times for different charges based on the same incident. Because counsel made a reasonable

strategic decision not to move to sever, we reject Lamon's argument that his counsel ineffectively represented him.

By the Court.—Judgment and order affirmed.

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

