COURT OF APPEALS DECISION DATED AND FILED

July 6, 2011

A. John Voelker Acting 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. 2010AP595 STATE OF WISCONSIN Cir. Ct. No. 2006CF6714

IN COURT OF APPEALS DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KYSHAWN LAMAR STRONG,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Kyshawn Lamar Strong appeals a judgment convicting him of one count of first-degree sexual assault of a child. He also appeals an order denying his motion for postconviction relief. He contends that he received ineffective assistance of trial counsel. We affirm.

- ¶2 To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's errors were prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "To prove deficient performance, a defendant must show specific acts or omissions of counsel that were 'outside the wide range of professionally competent assistance." *State v. Nielson*, 2001 WI App 192, ¶12, 247 Wis. 2d 466, 634 N.W.2d 325 (citation omitted). "We will not second guess trial counsel's selection of trial tactics or strategies in the face of alternatives that he or she has considered." *Id.*, 247 Wis. 2d 466, ¶44. "Rather, we 'judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Id.* (citation omitted).
- ¶3 Strong contends that his trial attorney, Reyna Morales, ineffectively represented him because she did not impeach the mother of the child victim at trial. Strong contends that the defense investigation yielded extensive, detailed, and corroborated evidence that the victim's mother had previously encouraged someone to make a false sexual assault allegation, which would have supported a defense theory that the mother persuaded the child to make a false allegation against Strong.
- At the postconviction motion hearing, Attorney Morales testified that she developed her defense theory after carefully considering the circumstances of the case, the information obtained by her investigator and after consulting with other attorneys in her office. Attorney Morales testified that she decided the best defense theory was that the child victim had fabricated the sexual assault allegation because the child believed it would be an effective way to get her mother to kick Strong, who was her mother's boyfriend, out of the house. Attorney Morales reasoned that the victim was upset by the fact that Strong had

recently returned to the home after an extended period of alienation, changing the family dynamics. Attorney Morales testified that she decided against presenting a defense that the mother had encouraged the victim to make a false allegation against Strong because Attorney Morales's investigation showed that the mother wanted Strong in her life and was trying to protect him even after her daughter told her about the assault; therefore, it was not plausible that she would falsely accuse him. Moreover, attacking the mother's credibility with the prior false sexual assault allegation would have run contrary to what Attorney Morales had concluded was the best defense theory—that the victim made the false allegation in order to get her mother to force Strong to leave the home.

Attorney Morales believed it would be best to argue that the child made false allegations because the child wanted to get Strong out of the house. Defense counsel built on the mother's strong affection for Strong, and rejected what Strong now argues would have been a better strategy that the mother caused the girl to falsely accuse Strong. As we previously explained, "[w]e will not second guess trial counsel's selection of trial tactics or strategies in the face of alternatives that [counsel] has considered." *Id.*, 247 Wis. 2d 466, ¶44. Attorney Morales's decision to forego using the information about the prior false sexual assault allegation was a sound trial strategy because the information was inconsistent with her theory of the defense. Therefore, we reject the argument that Strong received ineffective assistance of counsel.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).