

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2005

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. 04-0291-CR

Cir. Ct. No. 02CF006745

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN J. DELACRUZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Wedemeyer, P.J., Curley and Kessler, JJ.

¶1 PER CURIAM. John J. Delacruz appeals from a judgment convicting him of three counts of armed robbery, by threat of force, and two counts of concealing identity. He also appeals from the circuit court's order denying without an evidentiary hearing his postconviction motion alleging ineffective assistance of trial counsel. We conclude that the circuit court properly

rejected the defendant's motion and, accordingly, we affirm the circuit court's judgment and order.

¶2 At trial, Delacruz and his girlfriend, Sarah Cole, testified that three gang members, Moises Berrios, Fernando Velasquez, and Alejandro Cruz, intimidated and physically assaulted Delacruz because they believed he had stolen a safe containing money and drugs from Cruz. Delacruz testified that he felt coerced into committing the three robberies underlying this appeal in order to give money to Cruz. The jury rejected the defense.

¶3 His postconviction motion claimed that he was denied the effective assistance of counsel at trial. The motion indicated that counsel was ineffective for not calling the three alleged gang members Delacruz testified about to support his defense theory of coercion. He also claimed that counsel was ineffective for failing to call as a witness a neighbor identified only as "Carlos" to testify that he also had been intimidated by these alleged gang members prior to their alleged confrontation with Delacruz.

¶4 The circuit court rejected the motion without a hearing. The trial court noted that police reports of the crimes included statements from Berrios, Velasquez, and Cruz about their knowledge and participation in Delacruz's armed robberies. The circuit court determined that their proffered testimony, if consistent with their statements to police, would not have supported Delacruz's coercion defense. The circuit court concluded, therefore, there was no reasonable probability that their testimony would have caused a different result at trial. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984).

¶5 Upon review of the record and briefs, this court concludes that the circuit court's memorandum decision denying Delacruz's motion accurately and

completely sets forth the facts and law relevant to the disposition of this matter and thoroughly discusses the issues involved. Accordingly, we adopt the circuit court's memorandum decision as our own opinion on the case.¹ *See* WIS. CT. APP. IOP VI(5)(a) (Oct. 14, 2003).

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

¹ A copy of the circuit court's memorandum decision is attached hereto and incorporated as though fully set forth.

