

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 14, 2012

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. 2011AP996-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2008CF1079

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ELVIN A. VASQUEZ-RAMOS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: MARK A. WARPINSKI, Judge. *Affirmed.*

Before Hoover, P.J., Peterson, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Elvin Vasquez-Ramos appeals a judgment convicting him of two counts of repeated sexual assault of two children. He also appeals an order denying his postconviction motion in which he alleged

ineffective assistance of trial counsel based on counsel's failure to attempt to "humanize" him to the jury. We affirm the judgment and order.

¶2 To prevail on an ineffective assistance of counsel claim, Vasquez-Ramos must establish both deficient performance and prejudice to the defense. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficient performance, he must demonstrate serious mistakes that cannot be justified in the exercise of objectively reasonable professional judgment. *Id.* at 689-91. Counsel's strategic choices, made with full knowledge of the facts and law, are virtually unassailable on appeal. *Id.* at 690-91. To establish prejudice, Vasquez-Ramos must show 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 that undermines this court's confidence in the outcome. *Id.*

¶3 Vasquez-Ramos faults his trial counsel for failing to present background information to the jury about Vasquez-Ramos' birthplace and childhood, his prior work experience, his attempt to better himself through education and his efforts to support and spend time with his son. At the postconviction hearing, Vasquez-Ramos' trial counsel stated he believed it would be detrimental to the defense for the jurors to consider Vasquez-Ramos' background as an illegal alien taking a job from an American citizen. Counsel also noted that Vasquez-Ramos had not been employed for almost two years

before the trial, so there was little benefit in presenting his work history. He was also concerned the jury would view evidence that Vasquez-Ramos was a warm, friendly person as evidence he was “grooming” his victims.

¶4 Vasquez-Ramos’ allegation of ineffective assistance of trial counsel fails for several reasons. First, he cites no legal authority for the proposition that effective counsel must attempt to humanize his or her client during the guilt phase of a trial, and our research discloses no case in which counsel is found ineffective on that basis. Almost all of the reported cases addressing counsel’s attempts to humanize a defendant relate to the penalty phase, particularly in death-penalty cases.

¶5 Second, Vasquez-Ramos admits that some of the questions he believes his counsel should have asked were objectionable on the ground of relevance. The questions do not relate to any of the elements of the offenses and do not enhance Vasquez-Ramos’ credibility.

¶6 Third, trial counsel raised valid strategic reasons for avoiding testimony about Vasquez-Ramos’ birth place and work experience and any evidence that would depict him as a warm and friendly person who could ingratiate himself into children’s lives.

¶7 Fourth, Vasquez-Ramos has not established any prejudice from his counsel’s conduct. There is no logical reason to believe that a person with

Vasquez-Ramos' background would not commit sex crimes against children. Counsel's decision not to humanize Vasquez-Ramos for the jury does not undermine this court's confidence in the verdicts.

¶8 Finally, Vasquez-Ramos requests a new trial in the interest of justice, contending that the real controversy was not fully tried. This argument is based entirely on the same issues regarding counsel's failure to humanize Vasquez-Ramos. We conclude that the controversy was fully and fairly tried.

By the Court.—Judgment and order affirmed.

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

