COURT OF APPEALS
DECISION
DATED AND RELEASED

December 19, 1995

No. 95-0653-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JONATHAN R. BLOUNT,

Defendant-Appellant.

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

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Jonathan M. Blount appeals from a judgment of conviction, upon a guilty plea, for first-degree sexual assault of a child, and from an order denying his motion for postconviction relief. He presents this court with two issues for review. First, he contends that he received ineffective assistance of trial counsel because his counsel failed to object to the sentence recommendation made by the State; failed to inform the trial court that he (Blount) was on medication during the plea hearing; and failed to seek a

determination of his mental competency. Second, Blount contends that he did not knowingly, voluntarily, and intelligently enter his guilty plea. We reject Blount's arguments and affirm.

The following facts are undisputed. Blount entered a guilty plea to first-degree sexual assault of a child, contrary to § 948.01(1), STATS. Pursuant to a plea agreement, the State agreed not to recommend a specific prison sentence, but to "leav[e] the amount to the Court." Blount was taking medication at the time he entered into the plea agreement. At Blount's sentencing, the prosecutor recommended that Blount should be sentenced for "a substantial period." Blount's attorney did not object to this "request" by the State, and Blount was sentenced to twenty years incarceration—the maximum sentence for the offense. Blount then filed a motion for postconviction relief, which was denied without a hearing on February 15, 1995.

Wisconsin analyzes claims of ineffective assistance of trial counsel using the two-prong test set forth in ***Strickland v. Washington***, 466 U.S. 668 (1984). *See* ***State v. Moats***, 156 Wis.2d 74, 100-01, 457 N.W.2d 299, 311 (1990). The first prong requires that the defendant show that counsel's performance was deficient. ***State v. Johnson,*** 126 Wis.2d 8, 10, 374 N.W.2d 637, 638 (Ct. App. 1985), *rev'd on other grounds*, 133 Wis.2d 207, 395 N.W.2d 176 (1986). That is, the defendant must show that counsel's conduct was "`unreasonable and contrary to the actions of an ordinarily prudent lawyer.'" ***Id***. at 11, 374 N.W.2d at 638 (citation omitted).

> Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to secondguess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.

Strickland, 466 U.S. at 689. Thus, because of the difficulties in making such a post hoc evaluation, "the court should recognize that counsel is *strongly presumed* to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." ***Id***. at 690.

The second prong requires that the defendant show that the deficient performance was prejudicial. ***Johnson,*** 126 Wis.2d at 10, 374 N.W.2d at 638. To be considered prejudicial, 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"—that is, "a probability sufficient to undermine confidence in the outcome." ***Strickland,*** 466 U.S. at 694. In reviewing the trial court's decision, we accept its findings of fact, its "'underlying findings of what happened,'" unless they are clearly erroneous, while reviewing "the ultimate determination of whether counsel's performance was deficient and prejudicial," *de novo*. ***State v. Johnson***, 153 Wis.2d 121, 127-28, 449 N.W.2d 845, 848 (1990). Further, if the defendant fails to adequately show one prong, we need not address the second. ***Strickland,*** 466 U.S. at 697. We need only address the prejudice prong of the ***Strickland*** test because we conclude it is dispositive in this case.

"[A]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." ***Strickland***, 466 U.S. at 691. Hence, to succeed in an ineffective assistance of counsel challenge, a defendant must prove facts upon which a showing of prejudice may be based. ***State v. Marty***, 137 Wis.2d 352, 364, 404 N.W.2d 120, 125 (Ct. App. 1987).

The same judge presided over both Blount's sentencing and his postconviction motion. When ruling on Blount's postconviction motion, the trial court made it clear that it "had very definite reasons for disregarding all recommendations and imposing the maximum sentence in this case." The court stated that it would have given the maximum sentence regardless of the State's recommendation. Accordingly, Blount has not shown how the result of the proceeding would have been different if his counsel would have objected to the State's recommendation; thus, he has not shown the necessary prejudice under ***Strickland***.

Blount also maintains his trial counsel was ineffective both in failing to inform the court that Blount was taking medication at the time Blount entered his plea and in failing to seek a determination of whether Blount was competent.

In his postconviction motion, Blount alleged that he was taking a plethora of prescription medications at the time he entered the plea. He alleged that counsel never informed the court that he was under the influence of the medications, and that this failure deprived him of his Sixth Amendment right to counsel. The trial court determined that Blount's argument consisted solely of conclusory allegations, and that Blount provided no factual support for the allegation that Blount's medication usage prevented him from understanding the nature of the proceedings. Therefore, the trial court concluded that Blount did not raise an issue of fact that he did not knowingly or voluntarily enter his plea. As such, the trial court concluded that Blount did not show deficient performance under ***Strickland***. We agree with the trial court.

There is no evidence in the medication list submitted by Blount that his medication rendered him confused or that he lacked the ability to understand other people. Further, the trial court carefully reviewed the defendant's December 1993 and January 1994 medical records, but was unable to find anything which raised a factual issue with respect to Blount's claimed mental impairment at time of the plea hearing. Mere conclusory allegations of claimed deficient performance or prejudice are insufficient under ***Strickland*** to establish ineffective assistance of counsel. *See* ***State v. Washington***, 176 Wis.2d 205, 214, 500 N.W.2d 331, 335 (Ct. App. 1993).

Finally, Blount claims he received ineffective assistance of counsel because counsel failed to seek a determination of Blount's competency. His argument on this claim is insufficiently developed; hence, we need not address it. *See* ***State v. Pettit***, 171 Wis.2d 627, 647, 492 N.W.2d 633, 642 (Ct. App. 1992).

Aside from ineffective assistance of trial counsel claims, Blount also contends that his plea should be invalidated because, he claims, the medication he was taking at the time of the hearing interfered with his understanding of the proceedings, making him unable to enter a knowing, voluntary, and intelligent plea.

A trial court should grant a defendant's request to withdraw a guilty plea after sentencing only if the defendant establishes by clear and convincing evidence that the withdrawal of the plea is necessary to correct a manifest injustice. ***State v. Woods***, 173 Wis.2d 129, 136, 496 N.W.2d 144, 147 (Ct. App. 1992). This decision lies within the sound discretion of the trial court,

and we will not reverse absent an erroneous exercise of that discretion. ***State v. Harrell,*** 182 Wis.2d 408, 414, 513 N.W.2d 676, 678 (Ct. App.), *cert. denied*, 115 S. Ct. 167 (1994).

The record at the plea hearing established that Blount's counsel was satisfied that Blount intelligently, voluntarily, and knowingly waived his constitutional rights. Further, the trial court in its postconviction ruling found that the plea-hearing transcript established that Blount understood the charges against him, the plea agreement, and the waiver of his rights. Further, Blount signed the guilty plea questionnaire and waiver of rights form, and acknowledged that he was not using drugs to such an extent that it interfered with his understanding of the court proceedings. Nothing that Blount presents on appeal undermines the trial court's discretionary decision to deny his request to withdraw his guilty plea; thus, we will not reverse.

By the Court.—Judgment and order affirmed.

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