

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

May 14, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**No. 95-1980-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**DANTE BOSTON,**

**Defendant-Appellant.**

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

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

PER CURIAM. Dante Boston appeals from a judgment of conviction for first-degree reckless homicide while armed, party to a crime. See §§ 940.02(1), 939.63, and 939.05, STATS. Boston also appeals from an order denying his post-conviction motion. Boston claims that the trial court erred in not holding a *Miranda-Goodchild* hearing to determine the voluntariness of his

statement and to establish whether his *Miranda* rights were given.<sup>1</sup> He also claims that the trial court erred in not holding a *Machner* hearing to determine whether defense counsel was ineffective.<sup>2</sup> We affirm.

Boston was charged with first-degree reckless homicide while armed, party to a crime, based upon his role in the death of Sam Baker. After his arrest, Boston made a statement to the police that implicated himself in the crime. Before trial, no written motions were filed challenging the admissibility of this statement. During trial, however, defense counsel requested a *Miranda-Goodchild* hearing to determine the voluntariness of the statement. The trial court denied Boston's request for a *Miranda-Goodchild* hearing. Boston was found guilty of the crime charged. Boston filed a post-conviction motion challenging defense counsel's effectiveness. The motion was denied without a hearing.

First, Boston alleges that the trial court erred in not holding a mid-trial *Miranda-Goodchild* hearing to determine the voluntariness of his statement made to the police, and to establish whether the *Miranda* warnings were given to him. “[U]nless the defendant challenges the voluntariness of the statements he made or that he was not advised of his *Miranda* rights, the trial court is under no obligation to hold an evidentiary hearing outside the presence of the jury.” *State v. Monje*, 109 Wis.2d 138, 149, 325 N.W.2d 695, 701 (1982). At trial, Boston conceded that he received complete *Miranda* warnings and did not dispute the voluntariness of his statement to the police. Further, he did not allege sufficient facts to raise a question of fact regarding the need for a *Miranda-Goodchild* hearing. *See id.* The trial court did not err in refusing to hold a mid-trial *Miranda-Goodchild* hearing.

Next, Boston alleges that the trial court erroneously denied his claim of ineffective assistance of counsel without holding a *Machner* hearing. To establish ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and also that this deficient performance was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

---

<sup>1</sup> *See Miranda v. Arizona*, 384 U.S. 436 (1966), and *State ex rel. Goodchild v. Burke*, 27 Wis.2d 244, 133 N.W.2d 753 (1965), *cert. denied*, 384 U.S. 1017 (1966).

<sup>2</sup> *See State v. Machner*, 92 Wis.2d 797, 285 N.W.2d 905 (Ct. App. 1979).

Normally, a post-conviction challenge to the effectiveness of trial counsel requires an evidentiary hearing at which counsel testifies regarding the defendant's assertions of deficient performance. *State v. Machner*, 92 Wis.2d 797, 804, 285 N.W.2d 905, 908 (Ct. App. 1979). If a post-conviction motion alleges facts that, if true, would entitle the defendant to relief on his claim of ineffective assistance, the trial court must hold a *Machner* hearing. *State v. Toliver*, 187 Wis.2d 346, 360, 523 N.W.2d 113, 118 (Ct. App. 1994). Conclusory allegations of ineffective assistance unsupported by factual assertions, however, are legally insufficient to compel a *Machner* hearing. *Id.*

Boston's post-conviction motion failed to allege sufficient facts to support a claim of ineffective assistance of counsel. His motion merely claims that trial counsel was ineffective because counsel did not object to the trial court's refusal to hold a *Miranda-Goodchild* hearing. The trial court determined that this did not justify a post-conviction hearing. We agree. Boston failed to allege sufficient facts to raise a question of fact regarding prejudice, specifically why "the results of the proceeding would be different," *Strickland*, 466 U.S. at 694, had counsel objected to the trial court's refusal to hold a *Miranda-Goodchild* hearing. The trial court correctly denied Boston's motion without a *Machner* hearing.

*By the Court.*—Judgment and order affirmed.

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