

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 30, 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. 95-2393-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JIMMY D. LAMON,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Rock County: J. RICHARD LONG, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Robert D. Sundby, Reserve Judge.

PER CURIAM. Jimmy Lamon appeals from a judgment convicting him of two counts of delivery of cocaine, two counts of delivery of marijuana and three counts of bail jumping. He also appeals a postconviction order denying his motion for a new trial.

Lamon argues (1) he is entitled to a new trial based on newly discovered evidence; and (2) he was denied effective assistance of counsel because his attorney did not attempt to sever the bail jumping charges from the original charges. For the reasons set forth below, we affirm the judgment and the order.

At trial, an informant, Anthony Bates, testified about three drug transactions he had with Lamon. In the first instance, an undercover narcotics agent accompanied Bates to an address near Lamon's residence. The officer testified at trial that Bates originally brought her a bag of marijuana from Lamon's residence, which he said Lamon sold him. The officer then observed Bates giving Lamon some money and the marijuana in exchange for a bag of what was identified as cocaine.

In the second instance, Bates met with a Janesville undercover police officer who testified that, after providing Bates with money to buy drugs, he followed Bates to Lamon's house and watched him enter the house and then exit a few minutes later. Bates gave the officer a bag of marijuana that Bates said he purchased from Lamon.

In the last instance, another undercover narcotics agent drove Bates to Lamon's residence on Nelson Street. The agent testified that after providing Bates with some money, he watched Bates walk a short distance with Lamon, and then Bates returned to the agent's car with a bag of cocaine, which he indicated Lamon had sold him.

Prior to these transactions, Lamon had been released on bond in connection with another felony charge, with the condition that he not commit any crimes. Lamon was charged with three counts of bail jumping based on the three drug transactions in this case.

After a jury trial, Lamon was convicted of two counts of delivering cocaine, two counts of delivering marijuana and three counts of felonious bail jumping. After the sentencing, Lamon moved for a new trial based on newly discovered evidence. At the hearing on the motion, Lamon's trial attorney testified that after the trial he learned of the existence of a letter, written by

Bates, to various individuals charged with drug crimes in which Bates acted as an informant. In the letter, Bates states he would alter his testimony if they were willing to help him financially. The trial court denied the motion and Lamón appeals.

Whether to grant a new trial on the grounds of newly discovered evidence is within the sound discretion of the trial court. *State v. Kaster*, 148 Wis.2d 789, 801, 436 N.W.2d 891, 896 (Ct. App. 1989). We will sustain a discretionary decision if the trial court "examined the relevant facts, applied the proper standard of law, and engaged in a rational decision-making process." *Schultz v. Darlington Mut. Ins. Co.*, 181 Wis.2d 646, 656, 511 N.W.2d 879, 883 (1994). The requirements for granting a new trial on the basis of newly discovered evidence are: (1) the evidence came to the moving party's attention after the trial; (2) the moving party was not negligent in failing to discover it earlier; (3) the evidence is material to an issue in the case; (4) the testimony is not cumulative to that introduced at trial; and (5) it is reasonably probable that a new trial would bring a different result. *State v. Johnson*, 181 Wis.2d 470, 489, 510 N.W.2d 811, 817 (Ct. App. 1993). At the postconviction hearing, the trial court concluded that Lamón failed to establish that the new evidence was material to an issue at trial or that it was reasonably probable a different result would be reached in a new trial.

Lamón argues that a witness's offer to "sell" testimony in other cases is material to this case because it speaks directly to the character of the witness and his willingness to perjure himself. We disagree. "New" evidence that tends only to impeach the credibility of a witness does not by itself warrant a new trial. *State v. Machner*, 92 Wis.2d 797, 806, 285 N.W.2d 905, 909 (Ct. App. 1979). Lamón's argument is essentially a challenge to Bates' credibility.

Next, Lamón argues a new trial would reach a different result because the letter severely undermines the credibility of the State's key witness. The trial court rejected Lamón's argument, noting that at least one law enforcement officer corroborated Bates' testimony describing each of the drug transactions. One of the officers witnessed the transactions directly and two others were present immediately before and after each transaction. Each of the officers identified Lamón as the individual from whom Bates obtained cocaine or marijuana or both.

Moreover, we agree with the State that the letter would not raise any significant questions about the witness's credibility at a new trial that were absent at the first trial. At trial, there was considerable inquiry into the witness's past record and the plea bargains he was negotiating with the State. In its closing argument, the prosecution discussed the problems with the witness's credibility at length, but asked the jury to accept his testimony as reasonable because it was corroborated. Finally, the letter itself gives little reason to doubt the witness's testimony because it does not suggest, either directly or indirectly, that the testimony was false. We conclude the trial court did not erroneously exercise its discretion in holding that the new evidence—the letter—would not cause a different outcome on retrial.

Lamon also argues that his trial counsel's failure to move to sever the bail jumping charges from the drug charges constitutes ineffective assistance of counsel. In order to prevail on a claim of ineffective assistance of counsel, a defendant must establish that counsel's actions constituted deficient performance and that such deficiency prejudiced the defense. *State v. Flynn*, 190 Wis.2d 31, 46, 527 N.W.2d 343, 349 (Ct. App. 1994), *cert. denied*, 115 S. Ct. 1389 (1995). Lamon's argument is limited to three sentences and a vague assertion of prejudice, without citation to authority or facts in the record. We may decline to review issues inadequately briefed, and we do so here. *See State v. Pettit*, 171 Wis.2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

By the Court.—Judgment and order affirmed.

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