



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

May 8, 2015

To:

Hon. Maryann Sumi
Circuit Court Judge
Dane County Courthouse
215 South Hamilton, Br 2, Rm 7105
Madison, WI 53703

Carlo Esqueda
Clerk of Circuit Court
Room 1000
215 South Hamilton
Madison, WI 53703

Paul L. Barnett
Assistant District Attorney
Rm. 3000
215 S. Hamilton St.
Madison, WI 53703-3211

Gina Frances Bosben
Frances Bosben Law Office
520 University Ave #355
Madison, WI 53703-1982

Robert Probst
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Christopher R. Golden 285611
New Lisbon Corr. Inst.
P.O. Box 4000
New Lisbon, WI 53950-4000

You are hereby notified that the Court has entered the following opinion and order:

2013AP1999-CR State of Wisconsin v. Christopher R. Golden (L.C. # 2010CF1677)

Before Lundsten, Sherman and Kloppenburg, JJ.

Christopher Golden appeals a judgment of conviction and an order denying his postconviction motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Golden was convicted after a jury trial of one count of second-degree sexual assault with use of force, contrary to WIS. STAT. § 940.225(2)(a) (1997-98). Four witnesses testified about the victim's recitation to them of the violent events of the assault. The victim then testified about what limited details she could remember. As to testimony recounting the victim's out-of-court statements, Golden's trial counsel did not file any pretrial motions or object during trial.

Golden filed a postconviction motion for a new trial, alleging that his trial counsel was ineffective for failing to object to the repeated testimony regarding the details of the sexual assault. The motion argued that this repetition had a prejudicial effect on Golden's defense. The circuit court held a *Machner*² hearing at which Golden's trial counsel testified that he had two reasons for not objecting. First, Golden's counsel believed that each of the witnesses' recitations of the victim's statements would have fallen within an exception to the hearsay rule. Second, counsel stated that it was part of his trial strategy to allow all of the versions of the victim's story to come into evidence so that he could emphasize inconsistencies among them.

The circuit court denied Golden's postconviction motion, concluding that his trial counsel was not deficient for failing to object to the repetitive statements for hearsay reasons, since the statements fell within exceptions to the hearsay rule. The circuit court further concluded that Golden's counsel's decision not to object was based on a trial strategy that was "a good strategy that simply for other reasons was unsuccessful." Golden now appeals.

On appeal, Golden argues that the cumulative effect of the witnesses' testimony about the details of the assault had a prejudicial effect, and that his trial counsel was ineffective for failing

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

to object or to try to otherwise limit that testimony. However, Golden fails to present a cogent legal analysis as to why the testimony was hearsay or was otherwise inadmissible.

The State asserts that the decision of Golden's trial counsel not to object was a well-founded strategic decision, made by an experienced attorney. Golden fails to make any argument to the contrary in his appellant's brief, and did not file a reply brief refuting the State's assertion that trial counsel's strategy was a reasonable one. A proposition asserted by a respondent on appeal and not disputed by the appellant in the reply brief is taken as admitted. See *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994).

A claim of ineffective assistance of counsel has two parts: (1) deficient performance by counsel and (2) prejudice to the defendant resulting from that deficient performance. *State v. Swinson*, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12. As discussed above, Golden fails to present a developed argument to persuade us that his trial counsel performed deficiently. Therefore, we conclude that Golden is not entitled to a new trial on the basis of ineffective assistance of counsel.

IT IS ORDERED that the judgment and order are summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals