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**DISTRICT III/IV**

June 1, 2015

To:

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

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2013AP2444-CR

State of Wisconsin v. Paul-Michael Ziegfield Stardust  
(L.C. # 2005CF76)

Before Blanchard, P.J., Lundsten and Higginbotham, JJ.

Paul-Michael Ziegfield Stardust appeals a judgment of conviction and an order denying postconviction relief. 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).<sup>1</sup>

We summarily affirm.

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

Stardust was charged with eight counts of child enticement based on claims that he had engaged in sexual activity with the victim, J.V., prior to J.V.'s eighteenth birthday. Stardust pled not guilty; he admitted that he had a romantic relationship with J.V., but contended that the sexual relationship began only after J.V. turned eighteen. The State dismissed one of the counts of child enticement prior to trial; the jury found Stardust guilty of five counts of child enticement and not guilty of the remaining two counts. Stardust filed a postconviction motion seeking a new trial, arguing that he had been denied the effective assistance of counsel. After a *Machner*<sup>2</sup> hearing, the circuit court determined that Stardust's trial counsel had not been ineffective and denied postconviction relief. For the reasons that follow, we conclude that Stardust has not shown that trial counsel was ineffective.

A claim of ineffective assistance of counsel must establish that: (1) counsel's performance was deficient; and (2) the deficient performance resulted in prejudice to the defense. *State v. Balliette*, 2011 WI 79, ¶21, 336 Wis. 2d 358, 805 N.W.2d 334. As to deficient performance, "counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland v. Washington*, 466 U.S. 668, 690 (1984). A rational strategic decision by counsel will not support a claim of ineffective assistance of counsel. *State v. Elm*, 201 Wis. 2d 452, 464-65, 549 N.W.2d 471 (Ct. App. 1996). To prove prejudice, "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. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694.

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

Whether a defendant has established that his trial counsel was ineffective is a mixed question of law and fact. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). We will not disturb the circuit court's factual findings unless those findings are clearly erroneous. *Id.* at 634. Whether counsel's conduct was deficient and prejudicial to the defendant are questions of law, subject to our independent review. *Id.*

Stardust contends first that his trial counsel was ineffective by failing to call witnesses that Stardust had identified who could have corroborated Stardust's testimony that the sexual relationship between Stardust and J.V. began after J.V.'s eighteenth birthday, not before, as he was charged. However, Stardust does not explain who those witnesses were, what their testimony would have been, or why the lack of that testimony would undermine our confidence in the outcome.

At the *Machner* hearing, trial counsel testified that he contacted all of the potential witnesses identified by Stardust, but many were reluctant or would not cooperate. Counsel explained that some potential witnesses did not want to get involved, some had information that was detrimental to the defense, and some did not remember anything useful. Counsel stated that he then developed a list of witnesses who willingly cooperated and had helpful testimony to provide and called the ones he believed were necessary for the defense.

Stardust makes a sweeping allegation that his counsel failed to call witnesses who would have disputed J.V.'s timeline of events and that the lack of defense witnesses was prejudicial. Specifically, however, Stardust asserts only that counsel failed to call witnesses who could have corroborated that J.V.'s description of Stardust's apartment was consistent with how the apartment would have appeared only after J.V. turned eighteen. Counsel explained, however,

that Stardust, Stardust's wife, and another defense witness testified as to the layout of Stardust's apartment, and that counsel determined that any additional witnesses on the same topic would have been cumulative. Because counsel provided an explanation of a reasonable strategy as to defense witnesses, and Stardust has not established that counsel's failure to call witnesses was either deficient or prejudicial, we reject Stardust's claim of ineffective assistance of counsel on this basis.

Stardust also contends that his trial counsel was ineffective by failing to cross-examine J.V. as to her report of sexual contact with Stardust on a date that Stardust established that he was out of town. Stardust asserts he provided an alibi defense that resulted in dismissal of the eighth count of child enticement, which had been premised on sexual contact occurring on that date. Stardust asserts that his trial counsel should have challenged J.V.'s credibility by questioning her as to her report of sexual contact on a date that Stardust established that he was out of town.

Trial counsel testified that he decided not to cross-examine J.V. as to J.V.'s claim of sexual contact related to the dismissed count because he recognized the possibility that J.V. would correct the date, resulting in an additional charge against Stardust that the defense would be unprepared to challenge. Counsel explained that J.V. had given other inconsistent information that was sufficient for the defense to challenge J.V.'s credibility, and that counsel decided that the risks of attacking J.V.'s allegation of sexual contact on that particular date outweighed the reward. Again, counsel provided a reasonable strategy, and thus counsel's performance was not deficient. Moreover, Stardust has not explained why our confidence in the outcome should be undermined by counsel's failure to attack J.V.'s credibility as to one claim of sexual activity.

Next, Stardust contends that his trial counsel was ineffective by failing to raise a claim of a violation of the witness sequestration order after an acquaintance of Stardust's reported that she heard J.V. talking to another potential witness in a courthouse restroom. Stardust asserts that he reported to his trial counsel that his acquaintance had overheard J.V. discussing her testimony with the other individual, but that his counsel did not pursue it. However, Stardust does not explain who the other person in the restroom was, what J.V. told her, whether the other person ever testified, or how the alleged violation of the sequestration order impacted that person's testimony. Stardust's general claim that there was a violation of the sequestration order does not show how his trial counsel was deficient by failing to pursue it or how his defense was prejudiced. Accordingly, we reject this claim of ineffective assistance of counsel as well.

Stardust also contends that his trial counsel was ineffective by failing to adequately discuss with Stardust the court's offer to the defense to grant a mistrial after the State played part of a recorded telephone conversation between Stardust and J.V. that the court then determined was inadmissible. Stardust contends that his trial counsel did not adequately explain the advantages and disadvantages of a mistrial to allow Stardust to make a knowledgeable decision on that issue. However, Stardust does not develop any argument as to how he was prejudiced by his counsel's failure to more fully discuss the mistrial option with him; he does not argue that he would have pursued a mistrial had he more fully understood the option. Rather, Stardust claims in conclusory fashion that his trial counsel should have had a longer discussion with him, that there were advantages and disadvantages to a mistrial that Stardust did not understand, and that whether to pursue a mistrial was an important decision. Because Stardust has not established that he was prejudiced as to this issue, we reject his claim of ineffective assistance of counsel.

Stardust's final claim of trial counsel error is that counsel should not have stated in closing arguments that: (1) the women who provided other acts evidence testimony against Stardust needed "closure" and that counsel recognized that because he "ha[d] a heart"; (2) a State's witness had testified that she saw Stardust and J.V. kissing; and (3) Stardust had "started" the relationship with J.V. Stardust contends that his counsel's comments as to the other acts evidence testimony implied that Stardust had no heart; that there had been no testimony by the State's witness as to J.V. and Stardust kissing; and that trial counsel should have clarified that the relationship Stardust "started" occurred after J.V. turned eighteen. We are not persuaded.

As the circuit court recognized, it was a reasonable strategy for trial counsel to sympathize with the other acts evidence witnesses to maintain credibility with the jury. The defense was not that all of the State's witnesses were lying; rather, the defense was that the relationship between J.V. and Stardust did not become sexual until after J.V. turned eighteen. Additionally, as the State points out, the State's witness had actually testified to seeing J.V. lying down with her head in Stardust's lap as opposed to the two kissing; Stardust does not explain why our confidence in the outcome of the trial should be undermined by that factual disparity. Finally, Stardust has not shown counsel was ineffective by failing to clarify, at one point in closing, that the defense argument was that the sexual aspect of the relationship between J.V. and Stardust began after J.V. turned eighteen. Stardust has not challenged the circuit court's finding that the defense closing argument, in its entirety, asserted that there was a relationship between Stardust and J.V. but that the relationship did not become sexual until after J.V. turned eighteen.<sup>3</sup>

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<sup>3</sup> The record does not contain a transcript of the closing arguments. We rely on the discussion of the closing arguments at the *Machner* hearing and in the parties' briefs.

Accordingly, we reject Stardust's claim that his counsel was ineffective during closing arguments.

Lastly, Stardust contends that he was denied the effective assistance of counsel based on the cumulative effect of the above errors. Because we have rejected Stardust's individual claims of ineffective assistance of counsel, we reject this last claim, as well.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*