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February 16, 2016

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

2015AP745

State of Wisconsin v. Raymond C. Williams (L.C. # 2009CF915)

Before Lundsten, Sherman and Blanchard, JJ.

Raymond Williams, pro se, appeals a circuit court order denying Williams's motion for postconviction relief under WIS. STAT. § 974.06 (2013-14).¹ Williams contends that he was entitled to a hearing on his claims of ineffective assistance of counsel. 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. We summarily affirm.

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

Williams was convicted of hiding a corpse and kidnapping by use of a dangerous weapon in February 2010, following a jury trial. Williams pursued a direct appeal, by counsel, challenging the sufficiency of the evidence to support the hiding a corpse conviction. We agreed that the trial evidence was insufficient, and reversed as to the hiding a corpse conviction. In February 2015, Williams filed a pro se motion for relief under WIS. STAT. § 974.06, contending that his trial counsel was ineffective. Williams asserted that his sufficient reason for failing to raise that claim earlier was the ineffectiveness of his postconviction counsel for failing to raise it on Williams's behalf. *See* § 974.06(4). The circuit court denied the motion without a hearing.

Williams asserts that his trial counsel was ineffective by failing to: (1) move to exclude any evidence as to the conduct underlying the prior related homicide charge against Williams in Illinois or object to the State's references to Williams as a "murderer," when Williams had been acquitted of the homicide charge; (2) obtain phone records that would have supported Williams's alibi defense; (3) argue that the kidnapping charge violated double jeopardy after Williams was acquitted of battery as to the same victim following the Illinois trial; and (4) challenge Wisconsin's jurisdiction to charge a kidnapping offense that originated in Illinois.² He contends

² In Williams's WIS. STAT. § 974.06 postconviction motion in the circuit court, Williams also argued that his trial counsel was ineffective by failing to challenge the dangerous weapons enhancer. Williams does not raise that argument on appeal, and we therefore need not consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we generally do not address issues not adequately briefed on appeal). In any event, on this issue, Williams asserted in his postconviction motion only that his trial counsel was ineffective by failing to challenge the dangerous weapon enhancer because the weapon—a pipe—was not found on him or near him, and no fingerprints were found on the pipe. Williams does not explain what argument counsel should have raised to challenge the dangerous weapon enhancer, what facts would have supported that argument, or how he was prejudiced by his counsel's failure to raise that argument. Williams's claim was therefore insufficient to warrant an evidentiary hearing. *See State v. Balliette*, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. To the extent Williams attempted to raise any other claims of ineffective assistance of counsel in his postconviction motion, we conclude that those claims were insufficiently asserted to warrant a hearing, *see id.*, and insufficiently briefed on appeal to warrant a response, *see Pettit*, 171 Wis. 2d at 646.

that his sufficient reason for failing to previously raise those claims is postconviction counsel's ineffectiveness for failing to raise those claims in a postconviction motion. He contends that he alleged sufficient facts to require the circuit court to hold a hearing on the motion. We disagree. We conclude that Williams's postconviction motion did not allege sufficient facts, if true, would entitle Williams to relief. See *State v. Balliette*, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334 ("If the [WIS. STAT. § 974.06] motion raises sufficient facts that, if true, show that the defendant is entitled to relief, the circuit court must hold an evidentiary hearing."). Accordingly, the circuit court did not err by denying the motion without a hearing. See *id.* ("[I]f the motion does not raise such facts, ... the grant or denial of the motion is a matter of discretion entrusted to the circuit court.").

A postconviction motion claiming ineffective assistance of counsel must show both that counsel's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show deficient performance, a defendant must identify specific acts or omissions of counsel that "were outside the wide range of professionally competent assistance." *Id.* at 690. To show prejudice, a defendant must establish 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." *Id.* at 694.

To show that trial counsel was ineffective, Williams was required to set forth sufficient material facts to explain the who, what, where, when, why and how to allow us "to meaningfully assess [his] claim." See *State v. Allen*, 2004 WI 106, ¶¶21, 23, 36, 274 Wis. 2d 568, 682 N.W.2d 433. We address, in turn, Williams's claims of ineffective assistance of counsel as set forth in his WIS. STAT. § 974.06 motion. See *id.*, ¶27 (reviewing court addresses only the

allegations contained in the four corners of a postconviction motion, and not any additional allegations that are contained in an appellant's brief). We now address each argument that Williams made in the circuit court and pursues in this appeal.

Williams argues that his trial counsel was ineffective by failing to move to exclude any evidence related to Williams's homicide charge or to object to the State's references to Williams as a "murderer." Williams contends that those references by the State were improper because Williams was acquitted of the homicide charge, the references were highly prejudicial, and there was no reason for the jury to hear those references when Williams was not on trial for homicide in this case. However, Williams does not explain what specific evidence his counsel should have moved to exclude from trial or on what basis. He does not explain why that evidence was irrelevant or inadmissible in this case, beyond asserting in conclusory fashion that the evidence should have been excluded because the charges in the cases were different and the evidence was unfavorable to Williams. Similarly, Williams does not explain on what basis his counsel should have objected to any references to evidence that Williams had committed a homicide in Illinois, despite being acquitted of that homicide charge, or why he believes those objections would have been successful or would have altered the outcome of his case. Accordingly, he has not alleged sufficient facts to establish ineffective assistance of counsel on this basis.

Williams also contends that his trial counsel was ineffective by failing to obtain phone records that would have supported Williams's alibi defense. Williams contends that the phone records would have shown that Williams was not with the victim in Wisconsin, corroborating Williams's defense and discrediting the victim's testimony. However, Williams does not explain how the phone records would have established that Williams could not have committed the kidnapping, beyond his conclusory assertion that they would have shown that Williams was not

with the victim in Wisconsin. Accordingly, Williams has not alleged sufficient facts to show ineffective assistance of counsel on this basis, either.

Williams also contends that his trial counsel was ineffective by failing to argue that the kidnapping charge violated double jeopardy after Williams was acquitted of battery as to the same victim in Illinois. Williams asserts that double jeopardy prohibits the State from litigating issues that were necessarily decided by a jury's acquittal. *See State v. Kurzawa*, 180 Wis. 2d 502, 524, 509 N.W.2d 712 (1994). He contends that, at the battery trial, the jury decided that Williams did not enter the victim's home, beat her with a pipe, threaten to kill her, or force her to drive to Wisconsin with him. However, Williams does not provide any factual or legal support for his assertions that those facts were necessarily decided by the jury in the battery trial, nor does he explain in what way those facts were relitigated in this case. Accordingly, Williams has not set forth sufficient facts to show that a double jeopardy argument would have been successful in his case. We therefore reject this ineffective assistance of counsel argument as well.

Finally, Williams argues that his trial counsel was ineffective by failing to argue that Wisconsin lacked jurisdiction to charge a kidnapping offense that originated in Illinois. Williams contends that the facts alleged—that Williams kidnapped the victim in Illinois and drove her to Wisconsin—established that only Illinois had jurisdiction to charge Williams with kidnapping. This argument fails at the outset. “As a general rule, when a person in one state begins a crime that is completed in another state, the crime is deemed to have been committed in the latter state.” *State v. Kelly*, 148 Wis. 2d 774, 778, 436 N.W.2d 883 (Ct. App. 1989). We discern no merit to the contention that counsel was ineffective by failing to challenge Wisconsin's jurisdiction to charge Williams with a kidnapping offense completed in Wisconsin.

Because Williams has not set forth sufficient facts to show that his trial counsel's performance was deficient or that any deficiency prejudiced his defense, he has not shown that he was denied the effective assistance of trial counsel. We reject Williams's contention that his postconviction counsel was ineffective by failing to raise ineffective assistance of trial counsel for the same reason. *See State v. Ziebart*, 2003 WI App 258, ¶15, 268 Wis. 2d 468, 673 N.W.2d 369 (a defendant's claim that postconviction counsel was ineffective by failing to challenge the effectiveness of trial counsel must show that trial counsel was, in fact, ineffective). Accordingly, Williams was not entitled to a hearing on his motion.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals