



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 III/IV

February 16, 2016

To:

Hon. David G. Miron
Circuit Court Judge
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Sheila Dudka
Clerk of Circuit Court
Marinette County Courthouse
1926 Hall Avenue
Marinette, WI 54143

Allen R. Brey
District Attorney
1926 Hall Avenue
Marinette, WI 54143-1717

Marguerite M. Moeller
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Gregory W. Wiercioch
Frank J. Remington Center
University of Wisconsin Law School
975 Bascom Mall
Madison, WI 53706-1399

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

2015AP961-CR

State of Wisconsin v. Alan Thomas Luccarini (L.C. # 2013CF64)

Before Lundsten, Sherman and Blanchard, JJ.

Alan T. Luccarini appeals from a judgment of conviction and a postconviction order. The only issue on appeal is whether Luccarini's trial counsel was ineffective at sentencing when he did not inform the court of the amount of time that Luccarini received in two cases in which extended supervision had been revoked. 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 affirm.

Luccarini pled no contest to operating a motor vehicle while intoxicated, seventh offense. The court sentenced Luccarini to eight years of imprisonment, consisting of four years of initial confinement and four years of extended supervision, to run consecutively to any sentence Luccarini was currently serving. Two months before sentencing, terms of extended supervision in two unrelated cases were revoked, and Luccarini was reconfined for two years, nine months and twenty-five days.

Luccarini's trial counsel did not mention the revocation of the extended supervision in his argument at sentencing because he did not think it would make a difference.² On appeal, Luccarini argues that the reconfinement information was "highly relevant" because the court imposed a consecutive sentence. Luccarini further argues that there is a "reasonable probability" that the court would have imposed a concurrent sentence if it knew how much reconfinement time had been ordered.

To succeed on a claim of ineffective assistance of counsel, Luccarini must show that counsel's performance was deficient and that counsel's errors were prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). A defendant must show both prongs of the test, and we need not address both components if a defendant does not make a sufficient showing on one

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

² In lieu of an evidentiary hearing under *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979), the parties stipulated that trial counsel "did not investigate or present to the Court the amount of time Mr. Luccarini would have to serve on revocation, because [counsel] did not think this information would have made a difference at sentencing."

prong. *See id.* at 697. The question of whether counsel's actions constitute ineffective assistance is a mixed question of law and fact. *State ex rel. Flores v. State*, 183 Wis. 2d 587, 609, 516 N.W.2d 362 (1994) (citing *Strickland*, 466 U.S. at 698). The circuit court's findings of fact will not be reversed unless they are clearly erroneous. *State v. Pitsch*, 124 Wis. 2d 628, 634, 369 N.W.2d 711 (1985). The ultimate conclusion of whether counsel's conduct violated the defendant's right to effective assistance of counsel is a question of law, which this court decides without deference to the circuit court. *State v. Johnson*, 133 Wis. 2d 207, 216, 395 N.W.2d 176 (1986).

This case is controlled by the standard of review. In its oral decision denying Luccarini's postconviction motion, the circuit court stated that it knew that extended supervision had been revoked when it imposed sentence. The court further stated that the revocation sentences related to their underlying crimes and that "[t]his was a completely new crime. And it wouldn't have mattered" if Luccarini had received the maximum available reconfinement time. Therefore, the court concluded that counsel had not been ineffective. In light of circuit court's finding that the amount of reconfinement time was not material to the sentence imposed in this case, Luccarini has not shown that he was prejudiced by counsel's failure to inform the court of the reconfinement sentences. *See, e.g., State v. Giebel*, 198 Wis. 2d 207, 219, 541 N.W.2d 815 (Ct. App. 1995) (concluding the defendant did not prove prejudice where the circuit court found that the sentence would have been the same).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals