



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](http://www.wicourts.gov)

**DISTRICT II**

January 11, 2017

To:

Hon. Scott C. Woldt  
Circuit Court Judge  
Winnebago County Courthouse  
P.O. Box 2808  
Oshkosh, WI 54903-2808

Melissa M. Pingel  
Clerk of Circuit Court  
Winnebago County Courthouse  
P.O. Box 2808  
Oshkosh, WI 54903

Christian A. Gossett  
District Attorney  
P.O. Box 2808  
Oshkosh, WI 54903-2808

Jonathan Thomas Groh  
353 Brantwood Court  
Neenah, WI 54956

Sarah K. Larson  
Assistant Attorney General  
P.O. Box 7857  
Madison, WI 53707-7857

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

---

2015AP2633-CR                      State of Wisconsin v. Cory D. Jackson (L.C. # 2013CF717)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Cory Jackson appeals from a judgment convicting him of three counts of second and subsequent offenses of manufacturing/delivering cocaine and one count of felon in possession of a firearm. Jackson also appeals from an order denying his postconviction motion seeking a new trial due to ineffective assistance of trial counsel. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. Wis. STAT. RULE 809.21 (2013-14).<sup>1</sup> We affirm the circuit court's determination that trial counsel did not perform deficiently and a new trial was not required.

---

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

Jackson filed a WIS. STAT. RULE 809.30 postconviction motion alleging that his trial counsel did not convey a plea offer to him. The circuit court held an evidentiary hearing on the motion, found credible trial counsel's testimony that she conveyed the plea offer to Jackson, found Jackson's testimony to the contrary not credible, and concluded that trial counsel did not perform deficiently.

On appeal, Jackson argues that he should have been permitted to call Jennifer Kettner to testify at the postconviction motion hearing that his trial counsel did not inform him of the plea offer.<sup>2</sup>

At the postconviction motion hearing, trial counsel testified that she conveyed to Jackson the only plea offer made in the case. Counsel recalled discussing the offer with Jackson during a jailhouse meeting in conjunction with revocation proceedings in another case. Jackson testified that she did not do so. Trial counsel testified and Jackson agreed that Jackson wanted to go to trial. Trial counsel testified that Jackson's companion, Kettner, was not present for meetings between counsel and Jackson in the jail. However, once Jackson was released from custody, Kettner attended some trial preparation meetings with Jackson in counsel's office.

---

<sup>2</sup> The State's respondent's brief argues that the circuit court did not err in finding that trial counsel conveyed the plea offer and therefore counsel did not perform deficiently. Jackson does not make this argument in his appellant's brief or reply brief. Rather, Jackson challenges only the circuit court's evidentiary ruling relating to Kettner. Even if Jackson's appeal challenged the ineffective assistance ruling, we would reject the challenge. The circuit court made a credibility determination, *State v. Below*, 2011 WI App 64, ¶4, 333 Wis. 2d 690, 799 N.W.2d 95, which was within its authority as the postconviction fact finder. The court's finding that counsel conveyed the plea offer to Jackson disposes of Jackson's claim that trial counsel performed deficiently. *State v. Smith*, 207 Wis. 2d 258, 273, 558 N.W.2d 379 (1997). The circuit court properly denied Jackson's postconviction motion for a new trial due to ineffective assistance of trial counsel.

The circuit court declined to let Kettner testify at the postconviction motion hearing. In an offer of proof, Jackson stated that Kettner “would testify that she was present for most or perhaps all of the meetings between Mr. Jackson and [trial counsel in counsel’s office].” The State conceded that Kettner was present for office meetings and that the plea offer was not discussed during those meetings. Kettner would also testify that either she or Jackson asked trial counsel if the State had extended an offer and that trial counsel said “no” or something equivalent. The court rejected Kettner’s testimony because the testimony was being offered merely to bolster Jackson’s testimony. The court found that trial counsel relayed the plea offer to Jackson and did not perform deficiently. Jackson appeals.

On appeal, Jackson argues that the circuit court erred when it would not permit Kettner to testify. Whether to permit Kettner to testify was within the circuit court’s discretion. *See State v. Warbelton*, 2009 WI 6, ¶17, 315 Wis. 2d 253, 759 N.W.2d 557. On this record, we conclude that the circuit court properly exercised its discretion. During the postconviction motion hearing, the State conceded that Kettner was present for office meetings. Trial counsel testified that she conveyed the only plea offer in the case to Jackson during a jail meeting; Kettner was not present for any jail meetings. Jackson testified that the plea offer was never conveyed in any meeting, which the circuit court did not find credible. Given that trial counsel recalled conveying the only plea offer to Jackson during a jail meeting, a meeting Kettner admitted she did not attend, there was no WIS. STAT. § 904.02 relevance to Kettner’s proffered testimony about what occurred

during subsequent office meetings.<sup>3</sup> The circuit court did not misuse its discretion when it barred Kettner from testifying at the postconviction motion hearing.

Jackson argues that Kettner’s testimony would have been relevant on the question of whether Jackson and Kettner inquired of trial counsel whether any plea offers had been made. Kettner’s offer of proof indicated that she would have testified that she was present when trial counsel denied that any plea offer had been extended. The court declined to allow Kettner to testify because her proffered testimony would not add anything new to the proceeding. Although the circuit court characterized Kettner’s proposed testimony as “bolstering,” we conclude that on this record, Kettner’s testimony would have been irrelevant to an issue in dispute: what occurred during the jail meetings she did not attend and during which counsel conveyed the only plea offer made in the case. We may affirm on grounds other than those cited by the circuit court, *see State v. King*, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (Ct. App. 1984), and we do so here.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed.

WIS. STAT. RULE 809.21.

---

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

---

<sup>3</sup> Kettner had no personal knowledge of what occurred during the jailhouse meetings between Jackson and trial counsel. Kettner could not testify outside her personal knowledge. *State v. Denton*, 2009 WI App 78, ¶16, 319 Wis. 2d 718, 768 N.W.2d 250.