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DISTRICT IV

January 11, 2018

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

2016AP1249-CR

State of Wisconsin v. Jesse L. Taylor (L.C. # 2011CF913)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Jesse Taylor 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 (2015-16).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

This is an appeal from sentencing after revocation of probation. Taylor was sentenced on one count of second-degree sexual assault of a child.

Taylor argues that his counsel at sentencing was ineffective in three ways: by failing to object to the State's inaccurate description of one of Taylor's prior offenses; by implying that race may have played a role in Taylor's prosecution and that the allegations against him in this case were false; and by failing to emphasize Taylor's progress in sex offender treatment.

To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if the defendant makes an inadequate showing on one. *Id.* at 697. To demonstrate 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. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.*

For purposes of this order, we assume, without deciding, that the performance of Taylor's attorney was deficient. We focus, instead, on whether that performance prejudiced Taylor such that our confidence in the sentence is undermined. We conclude that our confidence is not undermined.

Taylor argues that the "primary prejudice" that occurred was that counsel's errors created a false impression that Taylor "hadn't made any progress on probation." The most obvious flaw in this argument is that the circuit court, at sentencing after revocation, acknowledged that Taylor *had* made some progress. The court noted that Taylor's allocution "demonstrated some significant introspection," and that "all in all it sounds like there's been some forward progress,

and that's significant to me." Accordingly, even if it may be true that counsel's deficient performance *could* have left the false impression that Taylor made no progress on probation, it is clear from the record that the court did not actually hold such a false impression.

Taylor further argues that prejudice occurred because his trial counsel missed the opportunity to provide additional information to convince the court that Taylor had changed his "attitude and beliefs regarding sex and relationships." He argues that this information would have helped convince the court that Taylor no longer had what he describes as the "defiant attitude" that he presented at the original sentencing.

This argument is not persuasive because the court at sentencing after revocation was not concerned only, or even primarily, with Taylor's conduct regarding sex and relationships, but also about his behavior in response to probation supervision generally. The court noted that Taylor "violated the rules consistently." Whatever progress Taylor may have made in sex offender treatment, it is clear from the many probation violations that Taylor's defiant attitude persisted.

Similarly, Taylor argues that his attorney's unnecessary assertion that race may have played a role in the prosecution undermined Taylor's attempt to show that his attitude had changed. However, again, Taylor's own conduct on probation undermined that showing far more than any comments by his attorney at sentencing.

IT IS ORDERED that the judgment and order appealed are summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Diane M. Fremgen
Acting Clerk of Court of Appeals