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DISTRICT II

March 21, 2018

To:

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

2017AP652-CR

State of Wisconsin v. Jameil A. Garrett (L.C. #2014CF1022)

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

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).

Jameil A. Garrett appeals from a denial of his postconviction motion alleging 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. *See* WIS. STAT. RULE 809.21

(2015-16).¹ We affirm the denial of Garrett’s postconviction motion as, even accepting that his trial counsel was deficient, which we do not, Garrett showed no prejudice from any alleged deficient performance.

Garrett was charged in September 2014 with aggravated battery, WIS. STAT. § 940.19(5), intimidation of a victim as a repeater, WIS. STAT. § 940.45(5), criminal trespass as a repeater, WIS. STAT. § 943.14, and disorderly conduct as a repeater, WIS. STAT. § 947.01, all resulting from Garrett violently attacking M.S. at her home. M.S. and Garrett have a child together. The only trial issues were whether Garrett was at M.S.’s home at the time of the assault and battery and whether Garrett battered M.S. A jury convicted Garrett on all charges, and Garrett received a prison sentence.

Garrett’s postconviction motion for a new trial, alleging that his trial counsel was ineffective, was denied by the circuit court after a *Machner*² hearing. Garrett claims that his trial counsel was deficient in preparing for trial, as all he did was review police reports. Garrett argues that counsel should have interviewed a witness, H.J., prior to trial and that he did not “investigate” the witnesses that were listed on the witness lists. In sum, Garrett claims that his trial counsel performed only a “minimal” investigation, and counsel’s lack of adequate “investigation and preparation” was constitutionally deficient.

The fault with Garrett’s motion is that he offers no showing of prejudice, i.e., any information that would have been helpful to his cause had his trial counsel performed a more

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

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

diligent “investigation and preparation.” At trial both M.S. and A.C. identified Garrett as M.S.’s attacker. H.J. testified at trial as a defense witness and testified that he could not identify Garrett as the person who battered M.S. Garrett makes no assertion or showing that a pretrial interview of H.J. would have helped Garrett’s case in any way.

A defendant claiming ineffective assistance of counsel must prove both that his lawyer’s representation was deficient and that he suffered prejudice as a result of that deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). If we conclude that a defendant has not proved one prong of the *Strickland* test, we need not address the other. *Id.* at 697. To demonstrate prejudice, a “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 a probability sufficient to undermine confidence in the outcome.” *Id.*

Garrett fails to present any evidence of prejudice; he makes no showing of any specificity as to what witnesses would have revealed and how the jury verdict would have been altered had his trial counsel done additional investigation. Garrett provided no alibi witnesses at the *Machner* hearing. Garrett’s argument that a failure to adequately prepare for trial is in itself prejudicial is conclusory. See *State v. Byrge*, 225 Wis. 2d 702, 724, 594 N.W.2d 388 (Ct. App. 1999).

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court denying Garrett's postconviction motion alleging ineffective assistance of trial counsel is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals