

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 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.*

Skelly first argues that his trial counsel was ineffective by not informing him of a plea offer from the State sooner than the scheduled trial date of August 12, 2015. Skelly argues that he was prejudiced by counsel's claimed failure because Skelly did not have sufficient time to consider the offer, and had been expecting a suppression motion to be filed first. As a result, Skelly asserts, he rejected the offer and instead later pled guilty to a less favorable offer.

This argument fails due to lack of prejudice. Although the State withdrew that offer in August 2015 when Skelly declined it, the State later renewed the offer in October 2015. Whatever prejudice related to this offer that Skelly might claim to have suffered from acts of counsel in or before August 2015 was cured by the later renewal of the offer in October. Counsel's acts before August 2015 did not cause Skelly to lose the opportunity to accept the offer.

Skelly appears to attempt to evade that problem by asserting that “[a]ny plea deals after [August] are immaterial.” He may be arguing that his attorney's earlier alleged deficient performance justified Skelly's decision to reject the plea offer in October 2015, so that he could

replace his attorney. In other words, Skelly may be arguing that his own rejection of the offer in October was a form of prejudice.

We reject that argument. Rejecting the offer was a gamble that Skelly took at the time. The State said at a hearing in October 2015 that it would withdraw the offer if Skelly attempted to replace his attorney, and Skelly then continued to assert his request for a new attorney. His attorney's earlier actions are not closely enough tied to Skelly's decision so as to be considered prejudice when it comes to rejection of the October offer.

IT IS ORDERED that the judgment of conviction and order denying his postconviction motion are summarily affirmed under WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals