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March 18, 2019

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

2018AP1242-CR State of Wisconsin v. Lakendrick Staten (L.C. # 2017CF1047)
2018AP1243-CR State of Wisconsin v. Lakendrick Staten (L.C. # 2017CF1692)

Before Kessler, P.J., Brennan 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).

Lakendrick Staten appeals circuit court judgments convicting him of first-degree recklessly endangering safety as party to a crime, second-degree recklessly endangering safety, and felony bail jumping. He also appeals the court's order denying his postconviction motion. Staten argues that his plea colloquy was defective, that the court erred by not holding a hearing prior to reducing his sentence credit, and that he received ineffective assistance of 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(1) (2017-18).[1] We affirm.

The charges against Staten arose out of multiple incidents, including one incident in which Staten was alleged to have fired shots in a store parking lot, and another incident in which Staten was alleged to have struck a law enforcement officer with his vehicle. After Staten pled guilty, the circuit court sentenced him to a total of fifteen years' imprisonment consisting of ten years of initial confinement and five years of extended supervision. The court denied Staten's postconviction motion without an evidentiary hearing.

Staten first argues that his plea colloquy was defective because it failed to establish that he understood the elements of both first-degree recklessly endangering safety as party to a crime and second-degree recklessly endangering safety. According to Staten, this alleged defect required the circuit court to hold an evidentiary hearing under ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), to determine whether he should be allowed to withdraw his plea.

We reject this argument because, regardless of whether Staten has shown a defect, his postconviction motion failed to include allegations that, because of the alleged defect, he did not understand the elements of either first-degree recklessly endangering safety as party to a crime or second-degree recklessly endangering safety. A motion for a hearing under ***Bangert*** must "state what [the defendant] did not understand, and connect [this] lack of understanding to the deficiencies" in the plea colloquy. ***State v. Brown***, 2006 WI 100, ¶67, 293 Wis. 2d 594, 716 N.W.2d 906.

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Staten next argues that the circuit court erred by not holding a hearing prior to reducing his sentence credit from 331 days to 215 days. Staten does *not* argue that he was entitled to more than 215 days. Rather, he argues that this correction to the amount of credit was a new sentencing factor and that, under ***State v. Prihoda***, 2000 WI 123, 239 Wis. 2d 244, 618 N.W.2d 857, the circuit court should have held a hearing before making the correction. We are not persuaded.

A new factor is "a fact or set of facts highly relevant to the imposition of sentence, but not known to the [circuit court] judge at the time of original sentencing, either because it was not then in existence or because, even though it was then in existence, it was unknowingly overlooked by all of the parties." ***State v. Harbor***, 2011 WI 28, ¶40, 333 Wis. 2d 53, 797 N.W.2d 828 (citation omitted). Here, nothing in the circuit court's sentencing remarks indicates that the court considered the amount of sentence credit before determining the length of Staten's sentence, and Staten points to no authority supporting his assertion that a correction to his sentence credit would be "highly relevant" to the imposition of sentence in this circumstance. *See* ***id.***, ¶40. We therefore reject Staten's new-factor argument.

As to whether the circuit court erred by not holding a hearing prior to making the correction, ***Prihoda*** makes clear that, regardless of whether the court erred in that respect, there is no reason to remand for a hearing now. As long as a defendant had a meaningful opportunity in the course of postconviction and appeal proceedings to challenge a correction, remand for a further hearing is unnecessary. *See* ***Prihoda***, 239 Wis. 2d 244, ¶¶8, 51; *see also* ***State v. Amos***, 153 Wis. 2d 257, 279-82, 450 N.W.2d 503 (Ct. App. 1989). Here, Staten had the opportunity to make his new-factor argument in his postconviction motion and appellate briefing. Nothing in his argument indicates that further factual development was necessary to support that argument.

Staten's third and final argument is that he received ineffective assistance of counsel when counsel demanded further payment before ordering a PSI and when counsel failed to make the circuit court aware of Staten's drug issues. We are uncertain whether Staten is arguing that the alleged ineffective assistance justifies plea withdrawal or resentencing. Regardless, we conclude that the court properly denied Staten's ineffective assistance claims without an evidentiary hearing.

An evidentiary hearing on a postconviction claim for ineffective assistance of counsel is not necessary "if one or more key factual allegations in the [postconviction] motion are conclusory." ***State v. Allen***, 2004 WI 106, ¶12, 274 Wis. 2d 568, 682 N.W.2d 433. Non-conclusory allegations provide the "who, what, where, when, why, and how" of a claim sufficient to allow the court to meaningfully assess the claim. *See* ***id.***, ¶23. A claim of ineffective assistance of counsel requires both that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). 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.

Regardless of whether Staten's motion sufficiently alleges deficient performance, we conclude that it is conclusory as to prejudice. In claiming prejudice, Staten simply alleges that he "believes the PSI report would have been beneficial to his sentencing" and that, but for counsel's alleged errors, he "would have received a PSI report to fully evaluate [his] sentencing issues," and "the judge would have been aware of the [drug] issue and there would have been a reasonable probability of receiving drug treatment programming." Without additional allegations explaining how or why it was reasonably likely that the availability of a PSI or

information about Staten's "drug issues" would have affected the outcome in Staten's favor, Staten's motion is insufficient.

Therefore,

IT IS ORDERED that the circuit court's judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Sheila T. Reiff
Clerk of Court of Appeals