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DISTRICT I

March 22, 2019

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

2018AP1480-CR State of Wisconsin v. Darron A. Woods (L.C. # 2015CF4040)

Before Kessler, P.J., Kloppenburg and Dugan, 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).

Darron Woods appeals a circuit court judgment convicting him of child abuse. Woods also appeals the court's order denying his postconviction motion. Woods seeks to withdraw his guilty plea, arguing that counsel was ineffective by failing to explain what it meant for a charge to be dismissed but read in. 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.

Woods was charged with one count of physical abuse of a child and one count of strangulation and suffocation. According to the criminal complaint, citizen witnesses saw Woods grab and shake, and repeatedly strike or punch, the child. The complaint further alleged that the child reported his neck was sore because Woods choked him, and that he had difficulty breathing when Woods squeezed his neck.

The parties entered into a plea agreement under which Woods pled guilty to the child abuse charge and the strangulation charge was dismissed and read in. In sentencing Woods, the circuit court considered allegations relating to the strangulation charge as an aggravating factor.

Woods filed a postconviction motion in which Woods claimed that counsel was ineffective by failing to explain what it means for a charge to be dismissed, but read in. The circuit court denied the motion without an evidentiary hearing.

Woods argues that he was entitled to an evidentiary hearing. We disagree.

The circuit court need not hold an evidentiary hearing if the defendant fails to allege sufficient facts in a postconviction motion, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. ***State v. Sulla***, 2016 WI 46, ¶¶23, 27, 29-30, 369 Wis. 2d 225, 880 N.W.2d 659; *see also* ***Nelson v. State***, 54 Wis. 2d 489, 496, 195 N.W.2d 629 (1972) ("[W]here the record sufficiently refutes the allegations raised

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

by the defendant in the motion, no hearing is required."). We review de novo whether a hearing is required under these standards. *See* ***Sulla***, 369 Wis. 2d 225, ¶23. Here, we conclude that no hearing was necessary because the record conclusively demonstrates that Woods is not entitled to relief on his ineffective assistance of counsel claim.

In order to show ineffective assistance of counsel, a defendant must demonstrate 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 satisfy the prejudice requirement in the plea context, "the defendant must show that there is a reasonable probability that, but for counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985).

A "read-in charge" has been defined as any offense "'that is uncharged or that is dismissed as part of a plea agreement, that the defendant agrees to be considered by the court at the time of sentencing and that the court considers at the time of sentencing[.]'" ***Sulla***, 369 Wis. 2d 225, ¶33 (citation omitted). Another definition is "charges [that] are expected to be considered in sentencing, with the understanding that read-in charges could increase the sentence up to the maximum that the defendant could receive for the conviction in exchange for the promise not to prosecute those additional offenses." ***Id.*** (citation omitted; brackets in original).

In his postconviction motion, Woods alleged that counsel failed to explain that, by agreeing to have the strangulation charge dismissed but read in, Woods was agreeing to allow the court to consider that charge at sentencing. Woods also alleged that he believed the court would not consider that charge at sentencing, and that he pled guilty based on this incorrect belief.

Woods further alleged that, had he understood that he was agreeing to allow the court to consider the strangulation charge, he would not have entered a guilty plea.

We conclude that the record conclusively demonstrates that Woods is not entitled to relief because the record refutes Woods's allegation that he did not understand that he was agreeing to allow the circuit court to consider the strangulation charge at sentencing. Thus, regardless of whether counsel performed deficiently, Woods fails to show prejudice.

First, at the outset of the plea hearing, the prosecutor summarized the plea agreement as including that "the State would move the Court to dismiss and read in Count 2 [the strangulation charge] *for consideration at sentencing*" (emphasis added); the circuit court then asked Woods, "Did you listen to what the assistant district attorney just said?" and Woods responded, "Yes." Second, Woods personally confirmed that his attorney explained the plea agreement to him as the prosecutor had just explained it. Third, Woods personally acknowledged that he signed a plea questionnaire and waiver of rights form stating that "I understand that if any charges are read-in as part of a plea agreement they have the following effects: … Sentencing—although the judge may consider read-in charges when imposing sentence, the maximum penalty will not be increased." Fourth, Woods personally acknowledged that he read the form. Finally, the court asked Woods, "Did you understand everything on this form?" and Woods responded, "Yes."

Woods argues that the record does not conclusively demonstrate that he was fully informed of the impact of a read-in charge or that he fully understood the impact. In particular, Woods contends that the record does not show that he was informed or understood that the court's consideration of a read-in charge could increase his sentence on the charge to which he pled guilty. We do not find this argument persuasive because Woods did not allege in his

motion, and does not explain now, what other plausible understanding he might have had as to what it would mean for the court to consider a read-in charge at sentencing, particularly in light of the record reviewed above. We need not address any undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

Therefore,

IT IS ORDERED that the circuit court's judgment 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