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DISTRICT IV

April 25, 2019

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

2018AP713-CR State of Wisconsin v. John J. Sadler (L.C. # 2016CF93)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, 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).

John J. Sadler appeals a judgment of conviction and a circuit court order that denied Sadler's postconviction motion for resentencing. Sadler argues that he was denied the effective assistance of counsel at sentencing. 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 (2017-18).[1] We summarily affirm.

Sadler pled guilty to two counts of second-degree sexual assault of a child, and two counts of incest with a child were dismissed and read in for sentencing. According to the criminal complaint, Sadler repeatedly sexually assaulted a close family member in several counties when the victim was ten and eleven years old, including repeated acts of sexual intercourse. The circuit court sentenced Sadler to thirty-nine years of initial confinement and twenty years of extended supervision. Sadler moved for resentencing, arguing that he was denied the effective assistance of counsel at his sentencing hearing. The postconviction court held an evidentiary hearing, and then denied the motion.[2]

A claim of ineffective assistance of counsel must establish that counsel performed deficiently and that the deficient performance prejudiced the defense. ***Strickland v. Washington***, 466 U.S. 668, 687-94 (1984). We review de novo whether counsel was deficient and whether any deficiency was prejudicial. ***State v. Thiel***, 2003 WI 111, ¶¶21-24, 264 Wis. 2d 571, 665 N.W.2d 305. We need not address both components of the analysis if the defendant makes an inadequate showing on one. ***Strickland***, 466 U.S. at 697. Counsel is deficient when "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment" because counsel's representation fell below an objective standard of reasonableness. ***Id.*** at 687-88. The deficient performance prejudices the defense

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

[2] The Honorable David J. Wambach presided at the sentencing hearing, and the Honorable William F. Hue presided at the postconviction evidentiary hearing.

when "counsel's errors were so serious as to deprive the defendant of a fair trial… whose result is reliable." ***Id.*** at 687. On review, "[w]e will uphold the circuit court's findings of fact unless they are clearly erroneous. Findings of fact include the circumstances of the case and the counsel's conduct and strategy." ***State v. Carter***, 2010 WI 40, ¶19, 324 Wis. 2d 640, 782 N.W.2d 695 (quoted source omitted).

Sadler contends that his counsel performed deficiently at sentencing by making disparaging remarks about Sadler that served no advocacy purpose, personally addressing the victim, and failing to argue mitigating sentencing factors. *See* ***Rickman v. Bell***, 131 F.3d 1150, 1157-60 (6th Cir. 1997) (counsel ineffective when he "combined a total failure to actively advocate his client's cause with repeated expressions of contempt for his client for his alleged actions"). Sadler then contends that counsel's failure to advocate at sentencing gives rise to a presumption of prejudice under ***United States v. Cronic***, 466 U.S. 648, 655-57, 659 (1984) (explaining that "if counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable"). Alternatively, Sadler contends that he was actually prejudiced by his counsel's deficient performance at sentencing. *See* ***Strickland***, 466 U.S. at 687. We conclude that counsel's performance was not deficient, and reject Sadler's claim of ineffective assistance of counsel on that basis.

Sadler contends that his counsel made improper negative comments about Sadler by stating that: (1) the situation was "awkward" for Sadler and counsel and that, although counsel was accustomed to child sexual assault cases, those cases were "never usually involving this type of an incestual situation"; (2) Sadler's actions were "to a level of depravity that our society just doesn't tolerate"; (3) based on Sadler's history of similar behavior, counsel believed that "this is

something that [has] been a sickness in him for a long time"; and (4) Sadler's sexual assaults of the victim were "deplorable," "[s]hort of homicide it doesn't get worse than this," and "[t]here are no words for it." We conclude that counsel's sentencing remarks, in their entirety, reflect a reasonable strategy of emphasizing Sadler's remorse and appreciation for the seriousness of his conduct, and thus his potential for rehabilitation. We therefore conclude that counsel's negative remarks about Sadler's conduct did not amount to deficient performance.

Defense counsel began his sentencing argument by stating that Sadler first and foremost wanted to apologize to the victim, and that he understood that there was nothing he could say that would change how his activities had impacted her. Thus, from the outset, counsel focused on a sentencing strategy of emphasizing that Sadler was remorseful and understood the seriousness of his crimes. Defense counsel then stated that it was a "very awkward situation" for both Sadler and defense counsel, and that counsel's prior work did not usually involve "this type of an incestual situation." Counsel stated that Sadler's actions went "to a level of depravity that our society just doesn't tolerate, *and Mr. Sadler understands that*." (Emphasis added.) Thus, counsel's opening statements as to the awkwardness of the situation and the severity of Sadler's crimes were made in the context of emphasizing to the court that Sadler fully understood the seriousness of Sadler having sexual intercourse with a close minor family member. Counsel further emphasized that point: "I think that's important for the Court to know because that went into his decision to eventually accept responsibility for his actions…. [H]e feels absolutely mortified by this."

Counsel also responded to the State's sentencing argument that Sadler had a history of similar behavior by arguing that "I believe that this is something that had been a sickness in him for a long time" which had not been addressed. Counsel argued that Sadler would have to

address those issues through the rehabilitative component of his sentence. Counsel noted that the circuit court had an obligation to look at the seriousness of the crimes as well, and that the defense could not "underestimate or minimize the seriousness of this. It's deplorable. Short of homicide it doesn't get worse than this." Counsel argued, however, that Sadler's acceptance of responsibility "speaks volumes for him to the extent that I don't know a person that could look anybody in the eye and admit to something like this…. [T]here are no words for it, but he did … because he … did not want [the victim] to be dragged through the system any further than she was." In context, then, counsel was consistently emphasizing that Sadler understood the seriousness of his acts of sexual intercourse with the victim while arguing for the court to consider the opportunity for rehabilitation along with punishment.

The postconviction court found, following the evidentiary hearing, that counsel employed a strategy at sentencing "to demonstrate to the court that [the] defendant was, in fact, owning responsibility, owning up to the responsibility of the crime."[3] Sadler agrees that focusing on his rehabilitative potential was a reasonable sentencing strategy, but contends that his counsel failed to properly execute that strategy. Instead, Sadler argues, his counsel unreasonably made negative remarks about him that served no advocacy purpose. We disagree. As set forth above, counsel employed a reasonable strategy of emphasizing that Sadler appreciated the seriousness

[3] As Sadler points out, the postconviction court found that specific statements by defense counsel at sentencing were below the objective standard of reasonableness, but that counsel's overall performance at sentencing was not deficient. Sadler argues that the court's decision was "perplexing," because, Sadler asserts, any error by counsel that amounted to deficient performance was sufficient to meet the deficiency prong. We need not address this argument because, while we uphold the court's factual finding as to the strategy employed by defense counsel unless that finding was clearly erroneous, we independently review whether counsel performed deficiently.

of his conduct and was genuinely remorseful, and thus could be rehabilitated. Counsel did not perform deficiently in executing that strategy.

Sadler also argues that his counsel improperly personally addressed the victim at the end of his sentencing argument. Counsel ended his sentencing argument by reiterating that Sadler was hopeful that the victim would be able to move on and not be affected by the sexual assaults for the rest of her life. Counsel then addressed the victim briefly, telling her, "Get help if you need it, and [Sadler] is no longer going to be a person that is going to be a threat to you regardless." Thus, counsel again emphasized that Sadler understood the impact of his actions on the victim, and also reiterated that no matter how long Sadler served in prison, he was no longer a threat to her.[4] We do not agree with Sadler that counsel was deficient by briefly addressing the victim in this way.

Sadler acknowledges that his counsel argued that Sadler has redeeming qualities and that his accepting a guilty plea was a mitigating factor. Sadler contends, however, that his counsel immediately undermined his mitigation argument by stating that: (1) Sadler had violated a no-contact order by contacting a friend who was a potential witness; (2) Sadler already received significant consideration for entering his plea; (3) Sadler had been protective of one of his sisters and thus had the ability not to violate "young women," which Sadler argues indicated to the court that Sadler had multiple victims and also undermined counsel's earlier argument that Sadler had a "sickness"; and (4) counsel agreed with the recommendation in the presentence

[4] We do not read this sentence as stating, as Sadler argues, that counsel expected the court to impose a functional life sentence.

investigation report (PSI) of twenty years of initial confinement, but that Sadler was asking for "something less." We disagree that counsel's remarks undermined his sentencing arguments.

Defense counsel acknowledged the State's sentencing argument that Sadler violated a no-contact order by contacting a friend who was a potential witness. Counsel argued that Sadler contacted the friend out of desperation and seeking advice, not out of an intention to disobey court orders. Also, in emphasizing that Sadler had taken responsibility for his actions, defense counsel acknowledged the consideration Sadler had received for entering a plea. Counsel again highlighted, however, that there was a coordinated effort to spare the victim from further court proceedings, and that "all this is going toward my rehabilitation request of the Court."

Counsel argued that the PSI set forth an appropriate sentencing recommendation of twenty-two years in prison, while conveying to the court that Sadler hoped the court would consider a sentence of fifteen years. Again, counsel reiterated that Sadler "owns this and he's taking responsibility for it," and argued that Sadler's acceptance of responsibility put him at an advantage for rehabilitation programming.

Counsel also argued that Sadler's history of protective behavior toward his older sister established that Sadler had the potential for rehabilitation, despite his history. Thus, counsel's comments reiterated the argument that Sadler was remorseful and in need of rehabilitation.

Sadler also contends that his counsel improperly failed to highlight at sentencing the facts in the PSI indicating that Sadler has a minor criminal record, a long work history, and low risk of recidivism, as well as Sadler's remorse, acceptance of responsibility, and cooperation and openness to programming. He also argues that his counsel unreasonably failed to present the mitigating factors of Sadler's lifelong love of fixing things and strong work ethic, overcoming a

serious traumatic injury as a child, and prosocial qualities, including close friendships. *See* ***Williams v. Taylor***, 529 U.S. 362, 395-99 (2000) (counsel rendered ineffective assistance by failing to uncover and present mitigating factors at sentencing). Sadler contends that this case is akin to ***State v. Jefferson***, No. 2011AP1778-CR, unpublished slip op. (WI App June 26, 2012). He contends that here, as in ***Jefferson***, counsel failed to inform the circuit court about Sadler's positive social history in any meaningful way. *See* ***id.***, ¶17 (trial counsel performed deficiently by failing to inform the circuit court about the defendant's good character and positive social history in any meaningful way). We disagree.

As explained, at sentencing, counsel made a strategic decision to focus on the mitigating factors of Sadler's acceptance of responsibility and genuine remorse for his actions. The sentencing judge confirmed that he had read the PSI, which contained the general information about Sadler's minor criminal history, work history, injury, and prosocial relationships. Defense counsel also highlighted that Sadler had positive relationships with his older sister and a long-term friend, and presented supportive comments by Sadler's mother. Accordingly, this is not a case in which counsel failed to present any mitigating factors to the circuit court. Because counsel did not perform deficiently, counsel was not ineffective.

Therefore,

IT IS ORDERED that the judgment and order are 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