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**DISTRICT IV**

May 6, 2019

To:

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

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2018AP81

Emon V. Hollins v. William J. Pollard (L.C. # 2014CV2049)

Before Lundsten, P.J., Blanchard 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).**

Emon Hollins, pro se, appeals a circuit court order that dismissed Hollins' petition for writ of habeas corpus. 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).<sup>1</sup> We summarily affirm.

In July 2014, Hollins filed a petition for writ of habeas corpus, seeking release from incarceration following his probation revocation. Hollins argued that his revocation counsel was ineffective by failing to object to a ruling by the administrative law judge (ALJ) that Hollins' proposed witness, C.W., would not be allowed to testify because she arrived at the revocation hearing after the close of testimony. The State moved for judgment on the petition based on laches, arguing that Hollins unreasonably delayed bringing the petition following his probation revocation in February 2012. The circuit court dismissed the petition based on laches, and Hollins appealed. This court reversed and remanded for further fact finding on the laches defense.

On remand, the State withdrew its laches defense because it was unable to locate Hollins' revocation counsel and therefore could not present necessary testimony. The circuit court determined that, because the State had withdrawn the laches defense, the court would move forward with Hollins' ineffective assistance of counsel claim. The court set the matter over for a later hearing to allow Hollins the opportunity to present evidence in support of his claim. At the later hearing, however, Hollins presented no evidence. Instead, Hollins argued that the State caused an unreasonable delay that prevented Hollins from being able to present testimony by his revocation counsel. The circuit court rejected Hollins' arguments and dismissed Hollins' petition on the merits.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

“A circuit court’s order denying a petition for writ of habeas corpus presents a mixed question of fact and law.” *State v. Pozo*, 2002 WI App 279, ¶6, 258 Wis. 2d 796, 654 N.W.2d 12. We will uphold a circuit court’s factual determinations unless they are clearly erroneous. *Id.* “Whether writ of habeas corpus is available to the party seeking relief is a question of the law that we review de novo.” *Id.* Ineffective assistance of counsel at a revocation hearing is reviewable by habeas corpus. *State v. Ramey*, 121 Wis. 2d 177, 182, 359 N.W.2d 402 (Ct. App. 1984).

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 (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,” in that counsel’s representation fell below an objective standard of reasonableness. *Id.* at 687-88. The deficient performance prejudices the defense when “counsel’s errors were so serious as to deprive the defendant of a ... result [that] 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).

Hollins contends that his revocation counsel was ineffective by failing to object to the ALJ’s ruling that C.W. would not be allowed to testify because she arrived at the revocation

hearing after the close of evidence. Hollins acknowledges that, at the revocation hearing, he conceded that he violated the rules of his probation. He argues, however, that C.W. would have testified that an alternative to revocation was in the best interest of Hollins, C.W., and their child because Hollins was a responsible father. He asserts that C.W. would have testified that she opposed the rule requiring that Hollins have no contact with C.W., thus supporting a change to Hollins' rules. He contends that C.W.'s testimony would have established that mitigating factors showed that Hollins' violation of probation rules did not warrant revocation; that Hollins' confinement was not necessary to protect C.W. or the public, to not unduly depreciate the seriousness of the rule violations, or to provide Hollins with treatment; and that Hollins needed a mental health alternative to revocation.<sup>2</sup>

Hollins also contends that his revocation counsel was ineffective by failing to challenge the following statements by Hollins' probation agent at the revocation hearing that Hollins asserts were untrue: (1) that Hollins had a probation rule requiring him to take psychiatric medication as prescribed and that Hollins refused to do so; (2) that Hollins failed to follow up with treatment providers for mental health services in the community; and (3) that Hollins informed the agent that Hollins did not have any mental health needs. He also contends that his revocation counsel was ineffective by advising him not to testify at the revocation hearing, contending that he would have provided a justifiable excuse for his probation rule violations. We conclude that Hollins has not established that he was prejudiced by his revocation counsel's

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<sup>2</sup> Hollins also asserts that his revocation counsel inaccurately stated that Hollins has a mental disorder that makes him dangerous. It is unclear how this point ties in to the remainder of Hollins' ineffectiveness argument. In any event, as explained, Hollins' probation was revoked based on his rule violations. Hollins does not develop an argument that his probation was revoked based on his revocation counsel's representation as to Hollins' mental health.

allegedly deficient performance, and we reject Hollins' claims of ineffective assistance of counsel on that basis.

Hollins' probation was revoked because Hollins violated the rules of his probation by: (1) repeatedly operating a motor vehicle without a valid driver's license; (2) repeatedly contacting C.W., as well as threatening her; (3) repeatedly threatening deputies at the Dane County Jail, as well as throwing toilet water at the deputies; and (4) refusing to provide a signed statement to his agent. Hollins does not dispute those rule violations.

The ALJ noted that C.W. was the victim in Hollins' underlying convictions for threatening to injure and bail jumping. The ALJ also noted that Hollins had acted in a threatening and aggressive manner to deputies while Hollins was confined in the Dane County Jail. The ALJ found, therefore, that confinement was necessary to protect the public. As part of her decision, the ALJ acknowledged that Hollins has mental health problems. The ALJ noted the agent's testimony that Hollins failed to take his medication or seek treatment in the community while on supervision. She also noted that Hollins continued to violate his supervision even when confined in the Dane County Jail, and found that Hollins had not shown any attempt to control his aggressive behavior and refrain from rule violations and criminal activity, either in the community or in jail. The ALJ found that Hollins' treatment needed to be addressed in confinement and that failure to revoke would unduly depreciate the seriousness of the violations.

Thus, the ALJ's decision to revoke Hollins' probation was based on Hollins repeatedly violating the rules of his probation, including acting in a threatening and aggressive manner toward both C.W. and deputies at the Dane County Jail. None of Hollins' claims of error by his revocation counsel undermine our confidence in the ALJ decision because those asserted errors

do not undercut the reasons for the probation revocation. That is, assuming that C.W. and Hollins had testified and revocation counsel had challenged the agent's statements as Hollins has set forth, there is not a reasonable probability that the ALJ would not have revoked Hollins' probation. None of the additional testimony or challenges to allegedly false statements would have negated the reasons for probation revocation, nor would they have provided a persuasive reason for the ALJ to order an alternative to revocation. Accordingly, Hollins' claim of ineffective assistance of counsel fails as to the prejudice prong based on the face of the allegations Hollins has set forth.

Hollins also contends that he was denied his due process right to timely pursue his claim of ineffective assistance of counsel when the State raised a laches defense and the circuit court dismissed his petition on that basis. *See State v. Beyer*, 2006 WI 2, ¶25 n.37, 287 Wis. 2d 1, 707 N.W.2d 509 (explaining that "due process is satisfied when an opportunity is accorded to be heard in a court at a meaningful time and in a meaningful manner" (quoted source omitted)). Hollins contends that the State unreasonably delayed the circuit court reaching the merits of Hollins' ineffective assistance of counsel claim by raising a frivolous argument for dismissal based on laches. He argues that the delay denied him his due process right to be heard in a meaningful time and in a meaningful manner because, by the time Hollins' ineffective assistance of counsel claim was heard by the circuit court following remand, Hollins was unable to locate his revocation counsel. We disagree. First, Hollins has not developed any argument to establish that the State's laches defense was frivolous, and nothing in our decision remanding for further proceedings indicated that the laches argument was frivolous and therefore unreasonable. Moreover, as we have explained, Hollins' ineffective assistance of counsel argument fails on the merits because nothing Hollins alleges shows that he was prejudiced by his revocation counsel's

actions. Accordingly, we reject Hollins' contention that he was denied due process because he was unable to obtain his revocation counsel's testimony for the hearing following remand.

Therefore,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*