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DISTRICT II

April 28, 2021

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

2019AP469-CR

State of Wisconsin v. Sedric C. Anderson (L.C. #2013CF684)

Before Reilly, P.J., Gundrum and Davis, 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).

Sedric C. Anderson appeals from a judgment entered after a jury found him guilty of the following twelve offenses: two counts of first-degree recklessly endangering safety; one count of endangering safety by reckless use of a firearm; one count of possessing a firearm as a felon;

four counts of felony bail jumping; and four counts of misdemeanor bail jumping.¹ He argues that he is entitled to a new trial based on the 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 (2017-18).² Because Anderson has not shown any prejudice from trial counsel’s allegedly deficient performance, we affirm.

For his involvement in an armed incident, Anderson was charged with the above-cited offenses. The following facts are taken from the testimony at trial. Anderson and his accomplice had been following a group of five people around Racine all evening. The group ended up at the home of T.O. As they parked and milled outside, the group saw Anderson and his accomplice appear from the back of T.O.’s house carrying guns. J.C., who is T.O.’s sister, was sitting in a car with J.W. They saw Anderson walking toward them, pointing his gun at J.C.’s face. J.C. and J.W. tried to turn the car on and maneuver away as Anderson ran after them, shooting his gun. The car crashed into a utility pole and caught fire. Anderson and his accomplice fled the scene. When shown a photo line-up, T.O., J.C., and J.W. immediately identified Anderson as the person who shot at the car. J.C. testified that she was familiar with Anderson and “knew exactly who Mr. Anderson was before the incident.”

The jury found Anderson guilty on all counts and the circuit court imposed a total sentence comprising thirty-two years of initial confinement and eighteen years of extended supervision.

¹ All counts were charged with the repeater enhancer. Some counts also included the dangerous weapon penalty enhancer.

² All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Anderson filed a postconviction motion seeking a new trial on grounds that trial counsel provided ineffective assistance by failing to adequately prepare for trial. Anderson also sought resentencing on grounds that the circuit court relied on inaccurate information concerning his prior record. Specifically, he disputed a statement in the presentence investigation report that he was adjudicated delinquent for a homicide when he was fourteen years old.

At an evidentiary *Machner*³ hearing, trial counsel testified that he spent hours preparing for trial and that he spoke with Anderson about matters including trial strategy and whether counsel should perform additional investigation or call other witnesses. Counsel testified that Anderson actively participated at trial by talking and providing notes to counsel throughout the testimony. Anderson disputed counsel's statements and testified that they never discussed anything about the case, either before or during trial. The circuit court determined that trial counsel's testimony was credible, and Anderson's was not. The court made findings of facts in support of its conclusion that counsel did not provide ineffective assistance at trial. However, because trial counsel's testimony reflected uncertainty as to whether Anderson had a meaningful opportunity to review the PSI before sentencing, and given the lack of documentation supporting the PSI's suggestion that Anderson had been adjudicated delinquent for a homicide, the court granted resentencing in front of a new judge.

At Anderson's resentencing, the circuit court imposed a bifurcated sentence comprising twenty-six years of initial confinement and eighteen years of extended supervision. Anderson appeals the denial of his motion for a new trial.

³ *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

To prevail on an ineffective assistance claim, a defendant must prove that (1) trial counsel's performance was deficient and (2) this deficiency was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish deficient performance, a defendant must show specific acts or omissions of counsel that were "outside the wide range of professionally competent assistance." *Id.* at 690. To satisfy the prejudice prong, the defendant must demonstrate that there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. Whether counsel's actions were deficient or prejudicial is a mixed question of law and fact. *Id.* at 698. We need not address both prongs if the defendant fails to make a sufficient showing on either one. *Id.* at 697.

We decide this case on the prejudice prong and conclude that Anderson has not met his burden to show a reasonable probability that counsel's alleged errors affected the outcome of his trial. Anderson's entire prejudice analysis consists of a single sentence stating only that trial counsel's "deficient performance led to many instances where the confidence in the outcome has been shattered."⁴ This conclusory argument contains no supporting facts and fails to set forth "the five 'w's' and one 'h'; that is, who, what, where, when, why, and how" necessary to prove

⁴ Anderson's deficiency analysis includes unsupported assertions that counsel failed to identify inconsistencies in some of the witness testimony. To the extent these assertions may go towards prejudice, they do not carry the day both because they are unsupported by the record, and there is no developed argument as to how any such inconsistencies would have led to a different outcome in light of the other evidence in this case.

prejudice.⁵ See *State v. Allen*, 2004 WI 106, ¶23, 274 Wis. 2d 568, 682 N.W.2d 433. We decline to consider Anderson’s unsupported and undeveloped argument because to do so would require this court to abandon its neutrality. See *State v. Gulrud*, 140 Wis. 2d 721, 730, 412 N.W.2d 139 (Ct. App. 1987). See also *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we may decline to review arguments “supported by only general statements” but not “reflecting any legal reasoning”).

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is 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

⁵ Anderson’s complaints about trial counsel’s performance at the original sentencing hearing are irrelevant to his claim that counsel provided ineffective assistance at trial. Anderson cannot possibly show that the outcome of his trial would have been different had counsel performed differently at sentencing. Further, Anderson received a new sentencing hearing where he was represented by new counsel. His sentencing complaints were remedied and he is due no further relief.