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DISTRICT I

November 16, 2021

To:

Hon. T. Christopher Dee
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Sarah Burgundy
Electronic Notice

John D. Flynn
Electronic Notice

Pamela Moorshead
Assistant State Public Defender
Electronic Notice

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

2020AP1627-CR

State of Wisconsin v. George Isiah Washington, III
(L.C. # 2016CF5419)

Before Brash, C.J., Dugan and White, 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).

George Isiah Washington, III, appeals from a judgment of conviction and an order denying his postconviction motion for relief. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We further conclude that the circuit court's decision identified and applied the proper legal standards to the relevant facts to reach the correct conclusion. Specifically, we

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

agree with the court's analysis that Washington has failed to establish ineffective assistance of counsel. We therefore incorporate into this order the circuit court's decision, which we are attaching, and summarily affirm on that basis. *See* WIS. CT. APP. IOP VI(5)(a).

In 2017, a jury convicted Washington of one count of armed robbery and one count of being a felon in possession of a firearm. According to the criminal complaint, Washington approached a customer as she was leaving an auto body shop, held her at gunpoint, emptied her purse, and took her phone and a few hundred dollars. The victim, B.N., called the police and through GPS tracking, police located Washington less than an hour later with B.N.'s phone and several hundred dollars. Police also located a firearm underneath the seat of the car where Washington had been sitting. Washington matched the description provided by B.N., which included a description of his clothes and his hair as having short twists. B.N. later identified Washington in a photo array, though she told police that she was only "50 [percent]" certain of her identification.

The matter proceeded to trial, where B.N., multiple officers, and Washington all testified. B.N. identified Washington in court with "[a] hundred percent" certainty. Washington also testified, providing the jury with inconsistent statements about how he obtained the phone. The jury convicted Washington on both charges.

Washington filed a postconviction motion alleging, as relevant to this appeal, ineffective assistance of counsel on the grounds that trial counsel failed to move to suppress the photo array because it was unduly suggestive and not conducted in compliance with the Department of Justice's Model Policy. Washington argued that he was the only person in the array with short twists in his hair. He also argued that B.N.'s subsequent in-court identification should have been

suppressed. Washington further argued that counsel was ineffective as to the cross-examination of B.N. and the officer who conducted the photo array, and for failing to request WIS JI—CRIMINAL 141, an identification jury instruction. He argued that the cumulative effect of counsel's errors prejudiced his defense. The circuit court denied Washington's motion. Washington now appeals.

The circuit court's decision states the relevant legal standards and applicable facts. We note, however, that while the court's decision focuses primarily on Washington's failure to establish prejudice, Washington also fails to establish deficient performance. This is because: (1) the photo array contains pictures of multiple suspects with similar hair styles, contrary to Washington's contention; and (2) Washington's arguments regarding the lack of compliance with the Model Policy are speculative. We adopt the circuit court's decision, which offers a complete and thorough analysis of the issues Washington now raises on appeal.

IT IS ORDERED that the 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