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DISTRICT IV

December 9, 2021

To:

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Circuit Court Judge
Electronic Notice

Lori Banovec
Clerk of Circuit Court
Adams County Courthouse
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Jamie R. Anderson 274129
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You are hereby notified that the Court has entered the following opinion and order:

2020AP579-CR State of Wisconsin v. Jamie R. Anderson (L.C. # 2017CF196)

Before Kloppenburg, Fitzpatrick, and Graham, 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).

Jamie Anderson appeals a judgment of conviction and an order denying his motion for postconviction relief. 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 (2019-20).[1] We affirm.

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

Anderson pled no contest to six felony counts. He filed a postconviction motion seeking to withdraw his pleas based on alleged ineffective assistance of trial counsel. The circuit court denied the motion without an evidentiary hearing.

To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if the defendant makes an inadequate showing on one. ***Id.*** at 697. To demonstrate prejudice, the defendant must show "that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. A reasonable probability is one "sufficient to undermine confidence in the outcome." ***Id.***

Because the circuit court denied Anderson's postconviction motion without an evidentiary hearing, on appeal we consider whether he was entitled to such a hearing because his motion alleged facts which if true, would entitle him to relief, which is a question of law we review without deference to the circuit court. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). However, Anderson's brief does not mention or attempt to apply this legal standard.

Anderson argues that his first trial attorney was ineffective by not filing a response to the State's other-acts motion. However, later in the same brief filed in this court, Anderson describes his second attorney as having argued against the motion. As a result, there is no meaningful allegation of prejudice from the alleged failure of the first attorney.

Anderson also asserts that his first trial attorney was ineffective by not filing a speedy trial demand. Anderson does not specify whether this demand would have been a statutory

speedy trial demand or a constitutional one. If statutory, under WIS. STAT. § 971.10, the only remedy provided by the statute for not meeting a speedy trial demand is release on bail pending trial. *See* § 971.10(4). Anderson does not explain how the absence of a statutory speedy trial demand caused him prejudice that would justify plea withdrawal. If Anderson is suggesting that there was a basis for a constitutional speedy trial demand, or for a motion to dismiss for violation of his constitutional right to a speedy trial, he has not developed any such argument based on applicable legal standards, and we do not discuss the point further.

Anderson asserts that his second trial attorney was ineffective by not communicating with him enough. However, he does not explain how this caused prejudice. Anderson also discusses his second attorney's argument against the State's other-acts motion. However, Anderson does not describe any alleged deficient performance by his second attorney in connection with that argument. Instead, Anderson asserts that the State's motion should not have been granted. However, the issue of the correctness of the court's evidentiary ruling was waived by Anderson's no-contest pleas, and we do not discuss that point further. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886.

Anderson asserts that his third trial attorney was ineffective by failing to communicate with him, but again he does not explain how this prejudiced him. Anderson also asserts that he told his third attorney that he wanted to enter an ***Alford*** plea, but the attorney did not say anything about that in court at the plea hearing. However, Anderson does not develop an argument explaining how he is prejudiced by the lack of an ***Alford*** plea.

Anderson also argues that his third trial attorney was ineffective by making an inadequate argument at sentencing. However, Anderson does not explain how ineffective assistance at sentencing would lead to withdrawal of his pleas, which is the relief he requests on appeal.

Anderson also asserts that he asked his third trial attorney for a change of venue, and that this attorney told him that the State said at some unspecified time that it would recommend a lower sentence than it actually did at sentencing. Neither of these issues was raised in Anderson's postconviction motion, and we do not address those now for the first time on appeal. *See* WIS. STAT. § 974.02(2); ***State v. Klapps***, 2021 WI App 5, ¶23 & n.3, 395 Wis. 2d 743, 954 N.W.2d 38 (2020) (before appealing in a criminal case, a defendant must first raise all issues by postconviction motion, unless the issue is sufficiency of the evidence or one previously raised during circuit court proceedings).

In addition to the reasons we have discussed that serve as bases to reject Anderson's arguments, Anderson failed to file a reply brief in this court. We conclude that failure concedes the arguments in the State's response brief. ***State v. Heimbruch***, 2020 WI App 68, ¶22 n.4, 394 Wis. 2d 503, 950 N.W.2d 916 ("[T]he failure of an appellant to file a reply brief … risks conceding arguments made in the respondent's brief.").

IT IS ORDERED that the judgment and order appealed are summarily affirmed under 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