

After a jury trial, Ferguson was convicted of one count of first-degree intentional homicide, by use of a dangerous weapon, and four counts of unlawfully possessing a firearm after being adjudicated delinquent. On direct appeal, Ferguson argued that there was insufficient evidence to convict him of three of the firearms charges and that his constitutional right to confrontation was violated by the admission at trial of a photograph. We rejected these arguments and affirmed the judgment of conviction. See *State v. Ferguson*, No. 2018AP1651-CR, unpublished slip op. (WI App Aug. 20, 2019).

Ferguson then filed the current postconviction motion *pro se*, arguing that his postconviction counsel was ineffective for failing to challenge his trial counsel's performance. Ferguson contends that his trial counsel was ineffective for failing to move to sever the homicide charge from the four counts of unlawfully possessing a weapon. The circuit court denied the motion.

To establish ineffective assistance of counsel, a person must show that counsel performed deficiently and that the deficient performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). In addition, a person arguing that he or she received ineffective assistance of postconviction/appellate counsel must also show that the claims he or she contends should have been raised are clearly stronger than the issues that postconviction counsel chose to pursue. *State v. Romero-Georgana*, 2014 WI 83, ¶¶45-46, 360 Wis. 2d 522, 849 N.W.2d 668.

Ferguson contends that his trial counsel was ineffective for failing to move to sever the charges because "it is irrational ... to expect [the jury] not to consider the inflammatory display of firearms before them while hearing arguments on whether or not a defendant committed a

homicide that was cause[d] by a firearm....” Ferguson further contends that this issue is clearly stronger than the two claims his postconviction counsel raised on direct appeal because, had trial counsel moved to sever the charges, he more than likely would have been successful and Ferguson “would have had a substantially greater chance of being acquitted of the firearms charges in a separate trial.”

Ferguson has not shown that his current argument is clearly stronger than the two arguments his postconviction/appellate counsel raised on direct appeal. *See id.* (stating that the defendant must show that his claims are clearly stronger than the issues that postconviction counsel chose to pursue). Ferguson does nothing more than baldly assert that the jury may have acted unfairly toward him in considering the homicide charge because the jury was also considering firearm charges at the same time, and asserts that he would have had a better chance of being acquitted of the firearm charges had they been tried separately. Ferguson does not explain why, based on the applicable law and the facts of this case, his trial counsel would have been successful had he moved to sever the charges. He also does not explain why this argument is clearly stronger than the two issues that counsel raised. Ferguson’s argument that his current issue is stronger is conclusory. Therefore, we conclude that Ferguson has not shown that he received ineffective assistance of postconviction/appellate counsel.

Upon the foregoing,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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