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DISTRICT I

February 1, 2022

To:

Hon. Michelle Ackerman Havas
Circuit Court Judge
Electronic Notice

Sonya Bice
Assistant Attorney General
Electronic Notice

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Patricia Sommer
Electronic Notice

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

2021AP537-CR

State of Wisconsin v. Grabiell F. Arias-Martinez
(L.C. # 2017CF2901)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Grabiell Arias-Martinez appeals a judgment convicting him of kidnapping, as a party to a crime. He also appeals the circuit court's order denying his postconviction motion.¹ He argues that the circuit court should have granted his motion for plea withdrawal based on his claim that

¹ The Honorable Joseph R. Wall presided over Arias-Martinez's plea and sentencing. The Honorable Michelle Ackerman Havas decided Arias-Martinez's postconviction motion.

he received ineffective assistance of trial counsel. We conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).² Upon review, we affirm.

To prove a claim of ineffective assistance of counsel, a defendant must show that his counsel performed deficiently and that this deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). The test for deficient performance is whether counsel’s representation “fell below an objective standard of reasonableness.” *State v. Carter*, 2010 WI 40, ¶22, 324 Wis. 2d 640, 782 N.W.2d 695 (citation omitted). To show prejudice, a defendant “must show [that] a different result is reasonably likely[.]” *State v. Villegas*, 2018 WI App 9, ¶38, 380 Wis. 2d 246, 908 N.W.2d 198. A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Strickland*, 466 U.S. at 697.

Arias-Martinez argues that his trial counsel provided him with constitutionally ineffective assistance because his counsel failed to explain to him that the circuit court could impose the maximum sentence on him. Arias-Martinez also asserts that trial counsel did not adequately explain the questions in the plea questionnaire and waiver of rights form to him. Arias-Martinez also contends that the circuit court should not have denied his postconviction claim without holding an evidentiary hearing.

Assuming for the sake of argument that Arias-Martinez’s trial counsel rendered deficient performance—an issue we do not decide—Arias-Martinez has failed to allege that his counsel’s actions prejudiced him. He has not explained why he would not have pled guilty but for the

² All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

allegedly erroneous advice he contends that his counsel gave him. To overcome this failing in his motion, Arias-Martinez contends in his appellant's brief that the circuit court should have *inferred* from the facts he alleged that he would not have pled guilty but for counsel's actions. This argument fails because a defendant who has entered a guilty plea must show that "there is a substantial, not just conceivable" chance that he would not have pled guilty but for counsel's erroneous advice. *See Villegas*, 380 Wis.2d 246, ¶38. Because Arias-Martinez has not adequately alleged that he was prejudiced by counsel's alleged error, the circuit court properly denied his motion for plea withdrawal without a hearing.

IT IS ORDERED that the judgment and order of the circuit court are 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