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DISTRICT I

March 29, 2022

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

Daniel J. O'Brien
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George Christenson
Clerk of Circuit Court
Milwaukee County
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Jermaine Scott 596151
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John D. Flynn
Electronic Notice

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

2021AP1108

State of Wisconsin v. Jermaine Scott (L.C. # 2015CF3606)

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

Jermaine Scott, *pro se*, appeals from an order denying his postconviction motion to withdraw his guilty plea. Upon our review of the briefs and record, we conclude at conference that this matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We summarily affirm.

On August 13, 2015, the State charged Scott with one count of armed robbery with the use of force. According to the complaint, Scott committed a carjacking while holding a butcher knife. Scott was seventeen years old at the time of the offense and was charged in adult court.

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

In September 2015, Scott pled guilty to the charged offense. The circuit court sentenced Scott to three years of initial confinement followed by four years of extended supervision.

In June 2021, Scott filed a *pro se* WIS. STAT. § 974.06 postconviction motion to withdraw his guilty plea alleging (1) that the circuit court lacked jurisdiction to accept his plea, and (2) ineffective assistance of trial counsel. Specifically, Scott argued that because he was seventeen years old when he was charged, he should not have been transferred into adult court without a waiver hearing. Because no such hearing took place, Scott argued that juvenile court, not adult court, was the proper jurisdiction for his case. Scott also argued that his trial counsel was ineffective for failing to raise the issue, for failing to investigate his case, and for coercing him into pleading guilty to an offense not supported by evidence.

The postconviction court denied the motion without a hearing, stating that subject matter jurisdiction was in adult court because, by its plain language, the juvenile code does not apply to those who commit crimes at age seventeen. Accordingly, the postconviction court stated that any objection by counsel on the issue would have been frivolous. The postconviction court also found that Scott's remaining ineffective assistance of counsel claims lacked merit and were "self-serving." This appeal follows.

On appeal, as best this court can discern, Scott again contends that he is entitled to plea withdrawal because the adult court lacked jurisdiction over his case and his trial counsel was ineffective. We disagree.

A defendant seeking to withdraw his or her plea after sentencing "must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (citation

omitted). Manifest injustice as it relates to plea withdrawal may be demonstrated by proving ineffective assistance of counsel. *State v. Taylor*, 2013 WI 34, ¶49, 347 Wis. 2d 30, 829 N.W.2d 482. To prove ineffective assistance of counsel, a defendant must show that his trial counsel's performance was deficient and that the deficiency prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The defendant "must prevail on both parts of the test to be afforded relief." *State v. Allen*, 2004 WI 106, ¶26, 274 Wis. 2d 568, 682 N.W.2d 433. We review *de novo* "the legal questions of whether deficient performance has been established and whether it led to prejudice rising to a level undermining the reliability of the proceeding." *State v. Roberson*, 2006 WI 80, ¶24, 292 Wis. 2d 280, 717 N.W.2d 111 (citation omitted). However, "[a] court need not address both components of this inquiry if the defendant does not make a sufficient showing on one." *State v. Smith*, 2003 WI App 234, ¶15, 268 Wis. 2d 138, 671 N.W.2d 854.

A defendant is not automatically entitled to an evidentiary hearing relating to his or her postconviction motion. *State v. Bentley*, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996). Rather, the circuit court is required to hold an evidentiary hearing only if the defendant has alleged "sufficient material facts that, if true, would entitle the defendant to relief." *Allen*, 274 Wis. 2d 568, ¶14. This is a question of law that we review *de novo*. See *id.*, ¶9. If, on the other hand, the postconviction motion "does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief," the circuit court, in its discretion, may either grant or deny a hearing. *Id.* We will uphold such a discretionary decision if the circuit court "has examined the relevant facts, applied the proper legal standards, and engaged in a rational decision-making process." See *Bentley*, 201 Wis. 2d at 318.

Here, Scott fails to prove a manifest injustice as to both his jurisdiction claim and his ineffective assistance of counsel claim. First, for purposes of criminal law, a person who is seventeen years old is an adult. *See* WIS. STAT. § 938.02(1), (10m). There was no juvenile waiver hearing in this case simply because Scott was not a juvenile. We agree with the postconviction court that “[t]here can be no clearer statement on the issue of jurisdiction in this matter: the juvenile court did not have jurisdiction because the defendant was not a juvenile at the time he committed the offense in this case. Consequently, the case was properly filed in adult criminal court.”

As best as this court can discern, Scott’s ineffective assistance of counsel argument on appeal centers on his contention that counsel should have ensured that his case was heard by the juvenile court. As explained, that argument would have been meritless and counsel is not ineffective for failing to make meritless arguments. *See State v. Toliver*, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994). To the extent Scott again contends that counsel was ineffective for failing to investigate his case and for coercing him into pleading guilty to an offense not supported by evidence, we note that the allegations are conclusory and do not allege facts that, if true, would entitle him to relief. *Allen*, 274 Wis. 2d 568, ¶14.

For the foregoing reasons, we affirm the circuit court.

IT IS ORDERED that the order 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