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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

June 15, 2022

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

2021AP732-CR State of Wisconsin v. John W. Warrix (L.C. #2016CF357)

Before Neubauer, Grogan and Kornblum, 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).

John W. Warrix appeals a judgment of conviction and an order denying his postconviction motion. Warrix alleges that the circuit court erred when it denied his postconviction motion without a ***Machner*** hearing.[1] 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).[2] We affirm.

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[1] ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (1979).

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

Warrix was charged with one count of first-degree reckless homicide, as a party to the crime, for his involvement in the death of S.R. *See* WIS. STAT. §§ 940.02(2)(a), 939.05 (2015-16). According to the complaint, on Monday, August 15, 2016, police found S.R. dead in her house from a heroin overdose. The police questioned Warrix on the scene. Warrix told the police that when he spoke with S.R. on the telephone on Friday, August 12, she was speaking slowly and had slurred speech. Cell phone records later showed that Warrix and S.R. were together on Saturday, August 13, and that Warrix called and texted S.R. on Sunday, August 14.

After he was arrested, Warrix made several statements to the police. On October 6, 2016, Warrix initially told the police that he did not speak to S.R. all weekend. Warrix claimed that he and his mother went to S.R.'s house on Monday morning because he was unable to contact S.R. After the police told Warrix that cell phone records and Warrix's mother's statement did not match Warrix's version of the events, Warrix told the police that he spent Sunday night at S.R.'s house. According to Warrix, when he woke up on Monday morning, S.R. was dead. Warrix told the police that he did not immediately call 9-1-1 because he panicked. Instead, Warrix called his mother, who drove to S.R.'s house and called 9-1-1. Warrix was in S.R.'s house for over fifty minutes before the police arrived.

Warrix told the police that he did not know how or why S.R. died. When questioned further, Warrix identified the dealer who may have sold the heroin to S.R. as "G Money." Warrix told the police to get Warrix's cell phone from his mother's house so that he could provide G Money's telephone number. Warrix also told that police that he would be able to identify G Money from a photographic line-up. Finally, after initially denying that he went with S.R. to purchase heroin, Warrix admitted that he and S.R. drove to Milwaukee on Sunday, where S.R. bought heroin from G Money.

In an interview on November 15, 2016, the police confronted Warrix with cell phone records showing that Warrix called G Money six times in one hour on Saturday, August 13. Warrix admitted that he went to Milwaukee with S.R. on Saturday to purchase heroin from G Money. Warrix told the police that he set up the deal with G Money and that S.R. would not have gone to Milwaukee to purchase the heroin if he had not set up the deal. Warrix then picked G Money out of a photographic line-up as the dealer who sold the heroin to S.R.

Warrix pled no contest, and the circuit court sentenced Warrix to fifteen years in prison, with ten years of initial confinement and five years of extended supervision, consecutive to a revocation sentence in another case. In its sentencing remarks, the circuit court noted that Warrix lied to law enforcement, finding that Warrix was "the most unreliable historian in this case because you couldn't be forthright to anyone at any given time." Additionally, the court found that Warrix's lack of concern for human life was an aggravating factor, noting that the one-hour gap between the time Warrix found S.R. and when he called for help, to be "the worst part of these facts." The circuit court found there was "clearly no question how serious this offense is," commenting that the maximum penalty was forty years in prison. *See* WIS. STAT. §§ 940.02(2)(a), 939.50(3)(c) (2015-16). It noted that Warrix was on probation when he committed the crime, but it gave Warrix credit for taking some responsibility by pleading no contest and not taking the case to trial. Finally, the circuit court found that Warrix was a danger to the community because Warrix did not understand the seriousness of his addiction, adding, "I am not assured that if you would walk out as a free person … that you wouldn't be engaged in the same activity … be it another victim or you."

Warrix filed a postconviction motion, arguing that his trial counsel was ineffective because she did not present Warrix's alleged cooperation with the police at sentencing.

Specifically, Warrix argued that he helped the police identify G Money when he gave the police access to his cell phone and identified G Money in a photographic line-up. Warrix claimed his cooperation was a mitigating factor that would have caused the circuit court to impose a lesser sentence because it showed remorse and acceptance of responsibility. Warrix thus requested a ***Machner*** hearing followed by resentencing. The postconviction court orally denied Warrix's motion without a ***Machner*** hearing.

Warrix claims that the postconviction court erred when it denied his motion without a ***Machner*** hearing. A postconviction motion alleging ineffective assistance of counsel does not automatically trigger the right to a ***Machner*** hearing. ***State v Phillips***, 2009 WI App 179, ¶17, 322 Wis. 2d 576, 778 N.W.2d 157. In our review of a postconviction court's denial of a ***Machner*** hearing, we review whether the motion on its face alleges sufficient facts which would entitle the defendant to relief. ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). If the motion fails to allege sufficient facts, it is within the postconviction court's discretion to deny the motion without a hearing. ***Phillips***, 322 Wis. 2d 576, ¶17. Further, "if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to … deny" a ***Machner*** hearing. ***State v. Ruffin***, 2022 WI 34, ¶28, ___ Wis. 2d ___, ___ N.W.2d ___ (citing ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433).

"A defendant is entitled to a ***Machner*** hearing only when his motion alleges sufficient facts, which if true, would entitle him to relief." ***State v. Sholar***, 2018 WI 53, ¶50, 381 Wis. 2d 560, 912 N.W.2d 89 (citation omitted). To obtain a ***Machner*** hearing, Warrix's motion needed to allege facts sufficient showing both deficiency and prejudice, which if true, would entitle him to relief. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Deficient performance results from specific acts or omissions of counsel that are "outside the wide range of

professionally competent assistance." ***Id.*** at 690. Prejudice occurs when counsel's errors were so serious that the defendant was deprived of a fair trial and a reliable outcome. ***Id.*** at 687. "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. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694.

Because Warrix's motion failed to allege sufficient facts to show counsel's failure to present Warrix's alleged cooperation at sentencing prejudiced him, we need not address whether it alleged sufficient facts as to whether counsel performed deficiently. *See* ***id.*** at 697 (court need not address both components of the inquiry if the defendant fails to make an adequate showing on either one). In orally denying Warrix's postconviction motion, the circuit court expressly determined that Warrix's alleged cooperation in identifying G Money was not relevant to its sentencing determination. Rather, the court determined that it was primarily concerned with Warrix's dishonesty and total disregard for human life. As a result, the postconviction court concluded that there was no reasonable probability that even if Warrix's alleged cooperation had been raised, it would have imposed a different sentence, explaining that "when you put [Warrix's cooperation] in context, everything around him picking out G Money was so unreliable that it wouldn't have helped in any way." *See* ***State v. Giebel***, 198 Wis. 2d 207, 219, 541 N.W.2d 815 (Ct. App. 1995) (defendant did not prove prejudice where the circuit court found it would have imposed the same sentence "even if trial counsel had performed at sentencing in the manner suggested by [the defendant]").

Additionally, the postconviction court did not consider Warrix's alleged cooperation to be a significant mitigating factor. The court observed that Warrix's alleged cooperation was a "double-edged sword" because it would have shown "how often [Warrix] lied." The record

supports this conclusion. It was undisputed that Warrix misled the police for months. Warrix gave the police access to his cell phone and identified G Money only after Warrix was confronted with the mounting evidence against him. Warrix's belated identification of G Money would only have underscored Warrix's initial dishonesty.

Warrix has not alleged facts sufficient to entitle him to relief on his ineffective-assistance-of-counsel claim, and the record conclusively demonstrates he is not entitled to relief. Accordingly, the postconviction court properly exercised its discretion when it denied Warrix's postconviction motion without a ***Machner*** hearing.

IT IS ORDERED that the judgment of conviction and postconviction order 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