OFFICE OF THE CLERK
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 I

July 19, 2022

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

John D. Flynn
Electronic Notice

Lisa E.F. Kumfer
Assistant Attorney General
Electronic Notice

Timothy A. Provis
Electronic Notice

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

2020AP1429-CR State of Wisconsin v. Nancy Moronez (L.C. # 2018CF888)

Before Donald, P.J., Dugan and White, 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).

Nancy Moronez appeals a judgment of conviction and an order denying her postconviction motion.[1] Moronez argues that the postconviction court erred when it denied her motion without holding a ***Machner*** hearing.[2] Based upon our review of the briefs and the

[1] The Honorable Mark A. Sanders presided over the plea and sentencing hearing and entered the judgment of conviction. The Honorable Stephanie Rothstein issued the order denying Moronez's postconviction motion.

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

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).[3] We affirm.

According to the criminal complaint, between 1980 and 1985, in three separate incidents, Moronez murdered three infants who were in her care—including her own 18-day-old son—because the babies would not stop crying. In 2015, Moronez's daughter contacted the police and reported that Moronez told her she had killed her son. Police then learned that Moronez was connected to the deaths of the other two children and opened an investigation. During a police interview, Moronez admitted to drowning her son and suffocating the other two children.

The State charged Moronez with three counts of second-degree murder.[4] Pursuant to a plea agreement, she pled guilty to three lesser charges of homicide by reckless conduct after affirmatively waiving the statute of limitations on those charges.

Postconviction, Moronez sought to withdraw her pleas based on trial counsel's alleged ineffectiveness. She argued: (1) trial counsel was ineffective for advising her to plead guilty, rather than no contest, which would have allowed her to avoid civil liability; and (2) trial counsel was ineffective for not explaining the nature of the plea agreement to ensure "*inter alia*" that she understood the reason she had to waive her statute of limitations defense. The circuit court denied Moronez's motion without holding a ***Machner*** hearing.

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

[4] Today, first-degree reckless homicide is the approximate equivalent of what was previously second-degree murder. *See* Judicial Council Note, 1988, WIS. STAT. § 940.02(1).

Moronez claims that the postconviction court erred when it denied her motion without a ***Machner*** hearing. However, 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.

To obtain a ***Machner*** hearing, Moronez's motion needed to allege facts sufficiently showing both counsel's deficient performance and prejudice, which if true, would entitle her 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 "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." ***Id.*** at 694. When the defendant is seeking plea withdrawal due to allegedly ineffective assistance, the prejudice prong requires a showing "that there is a reasonable probability that, but for … counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." ***Bentley***, 201 Wis. 2d at 312 (citation omitted).

Because Moronez's motion failed to allege sufficient facts to show counsel's alleged errors prejudiced her, we need not address whether it alleged to sufficient facts as to whether counsel performed deficiently. *See* ***Strickland***, 466 U.S. at 697 (providing that the court need not address both components of the inquiry if the defendant fails to make an adequate showing on either one). Moronez did not develop any argument in her postconviction motion to suggest

that she would have insisted on going to trial on three separate murder charges if trial counsel had told her she could face civil liability for entering guilty pleas or if she had known more about the statute of limitations having run on the reckless homicide charges.[5] Without more, we cannot conclude that Moronez satisfied ***Strickland***'s prejudice component. *See* ***State v. Jeninga***, 2019 WI App 14, ¶18, 386 Wis. 2d 336, 925 N.W.2d 574 (concluding that the defendant failed to show prejudice where the "postconviction motion alleged that he would not have pled, [but the defendant] provided no objective facts that evidenced *his* thinking and reasoning. Simply put, there is no record evidence that demonstrates from [the defendant] that he would not have pled and instead would have gone to trial").

Because Moronez's postconviction motion was inadequately pled, the postconviction court properly denied it without holding a ***Machner*** hearing.

Therefore,

IT IS ORDERED that the judgment and 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

[5] To the extent that Moronez tries to remedy this shortcoming in her appellate briefing, she is too late. *See* ***State v. Allen***, 2004 WI 106, ¶¶9, 27, 274 Wis. 2d 568, 682 N.W.2d 433 (explaining that we determine the sufficiency of a postconviction motion by reference to the four corners of the motion, not any subsequent briefs).