



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](http://www.wicourts.gov)

**DISTRICT I**

July 19, 2022

To:

Hon. William S. Pocan  
Circuit Court Judge  
Electronic Notice

Kara Lynn Janson  
Assistant Attorney General  
Electronic Notice

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

Russell Ramont Smalley Jr. 623473  
Redgranite Correctional Inst.  
P.O. Box 925  
Redgranite, WI 54970-0925

John D. Flynn  
Electronic Notice

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

---

2020AP954-CR	State of Wisconsin v. Russell Ramont Smalley, Jr. (L.C. # 2012CF2601)
2020AP955-CR	State of Wisconsin v. Russell Ramont Smalley, Jr. (L.C. # 2013CF3392)

Before Brash, C.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).**

In these consolidated appeals, Russell Ramont Smalley, Jr., *pro se*, appeals judgments convicting him of the following charges: one count of receiving stolen property, as a party to a crime; two counts of robbery with use of force; two counts of felony bail jumping; and one count of resisting or obstructing an officer. He also appeals the order denying his motion for postconviction relief. Based upon our review of the briefs and the record, we conclude at

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).<sup>1</sup> We affirm.

In Milwaukee County Case No. 2012CF2601, the State charged Smalley with two counts of receiving stolen property, as party to a crime. Smalley and his co-actor blamed each other for the underlying burglary, but both admitted to assisting in the sale of stolen property. While out on bail in that case, the State charged Smalley in Milwaukee County Case No. 2013CF3392 with three counts of robbery (use of force), four counts of felony bail jumping, one count of obstructing/resisting an officer, and one count of criminal damage to property. As to the robbery counts, the complaint alleged that Smalley approached women who were on their own property walking from their garages to their homes and stole their purses.

Smalley ultimately pled guilty to one count of receiving stolen property in the 2012 case. In the 2013 case, Smalley pled guilty to two counts of robbery, two counts of felony bail jumping, and resisting or obstructing an officer.

The circuit court held a joint sentencing hearing on the two cases. A number of residents of the neighborhoods where Smalley committed his crimes signed community impact statements. The statements generally explained that the residents, especially elderly women, were afraid to leave their homes because of Smalley's criminal behavior. The prosecutor discussed the community impact statements along with Smalley's criminal record and the details of the crimes to which he pled guilty.

---

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

The prosecutor also addressed a pattern of events that occurred on Milwaukee’s north side around the time that Smalley committed his 2013 crimes. The prosecutor informed the circuit court that there were a number of similar—but unsolved—claims of strong arm robbery concerning victims on their own property. The prosecutor explained that most of the crimes involved purse snatchings from elderly women. According to the prosecutor, these incidents “seem[ed] to match” the incidents described in the complaint against Smalley.

The circuit court sentenced Smalley to a total of fifteen and one-half years of initial confinement and four and one-half years of extended supervision. The circuit court noted at the outset that it viewed the various crime impact statements as being important to its decision. The circuit court discussed Smalley’s criminal record, his character, and the severity of the offenses, noting that they were aggravated for many reasons, not least of which was because Smalley had preyed on elderly women “in their comfort zone.” The circuit court also explained that its sentences largely were based on the need for punishment and the need to protect the public.

Following sentencing, Smalley filed numerous postconviction motions.<sup>2</sup> He argued, as relevant for purposes of these appeals, that the circuit court relied on inaccurate information during sentencing and that trial counsel was ineffective for not objecting to it.<sup>3</sup> Smalley pointed to the information regarding the uncharged robberies on Milwaukee’s north side during the summer of 2013. He argued that he was never charged with those crimes and there was no evidence of his involvement. The circuit court denied his motion without a hearing.

---

<sup>2</sup> These appeals have a convoluted procedural history, the specifics of which we need not get into for purposes of resolving Smalley’s claims.

<sup>3</sup> Smalley made other claims that he does not pursue on appeal. Consequently, we deem those claims abandoned.

On appeal, Smalley renews his postconviction claims that he was sentenced on inaccurate information and that his trial counsel was ineffective during sentencing for failing to object to the introduction of the inaccurate information. We address each claim in turn.

**A. *Smalley is not entitled to resentencing.***

A defendant has a due process right to be sentenced on the basis of accurate information. *State v. Tiepelman*, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. Whether a defendant has been denied this right presents a constitutional issue that this court reviews independently. *Id.* A defendant who moves for resentencing on the ground that the circuit court relied on inaccurate information must establish that there was inaccurate information before the sentencing court and that the court actually relied on the inaccurate information. *Id.*, ¶31. “Whether the court ‘actually relied’ on the incorrect information at sentencing [is] based upon whether the court gave ‘explicit attention’ or ‘specific consideration’ to it, so that the misinformation ‘formed part of the basis for the sentence.’” *Id.*, ¶14 (citation omitted).

Even if we were to accept that Smalley has shown that the information before the circuit court was inaccurate, Smalley’s claim fails because he has not demonstrated that the circuit court relied on the information at issue. Smalley contends that the circuit court’s reliance is established by specific references about the many community members that were affected by the cases.

A review of the sentencing transcript, however, reflects that the circuit court did not give explicit attention to the information about the uncharged offenses, nor did that information form part of the basis for the sentence. *See id.* The circuit court made this point clear in its written decision denying Smalley’s first postconviction motion, when it said that while the information

provided by the prosecutor may have suggested that Smalley was the perpetrator in some or all of the uncharged incidents, the circuit court did not rely on that information when sentencing Smalley. *See generally State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994) (explaining that postconviction proceedings afford the circuit court an additional opportunity to explain its sentencing rationale).

Smalley fails to prove that the circuit court actually relied on inaccurate information—namely the erroneous belief that that Smalley was involved in other uncharged offenses—when it sentenced him. We agree with the State’s assessment that simply saying that the circuit court actually relied on purportedly inaccurate information does not make it so. Instead, the sentencing transcript reflects that it focused its sentencing remarks on the offenses charged in the 2013 case. *See State v. Alexander*, 2015 WI 6, ¶¶25, 29, 360 Wis. 2d 292, 858 N.W.2d 662 (explaining that in reviewing whether a court actually relied on inaccurate information at sentencing, a reviewing court will examine “the whole sentencing transcript”).

***B. Smalley has not shown that he was prejudiced by trial counsel’s alleged deficient performance.***

Smalley additionally argues that trial counsel was ineffective for failing to object to the inaccurate information used at sentencing that suggested he committed the uncharged crimes while his 2012 case was pending.<sup>4</sup> We conclude that Smalley has not established that trial counsel was ineffective because he failed to show prejudice.

---

<sup>4</sup> Smalley makes fleeting references to trial counsel’s ineffectiveness for advising him to plead guilty. However, Smalley does not develop an argument related to the alleged ineffective assistance surrounding his decision to plead guilty; therefore, we will not address this facet of his claim further. *See State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (we will not address issues on appeal that are inadequately briefed). The same is true of Smalley’s vague references in his briefing to prosecutorial misconduct. *See id.*

Smalley contends that we should remand this case back to the circuit court for an evidentiary hearing. However, a postconviction motion alleging ineffective assistance of counsel does not automatically trigger the right to a 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 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). “[N]o hearing is required if the defendant fails to allege sufficient facts in his or her motion, if the defendant presents only conclusory allegations or subjective opinions, or if the record conclusively demonstrates that he or she is not entitled to relief.” *Phillips*, 322 Wis. 2d 576, ¶17.

To obtain a hearing, Smalley’s motion needed to allege facts sufficiently 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 “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694.

Because Smalley’s motion failed to allege sufficient facts to show counsel’s alleged errors prejudiced him, we need not address whether it alleged 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).

In its written decision resolving Smalley’s first postconviction motion, the circuit court explained that “[e]ven if counsel would have objected, the court would have indicated that it was

placing no weight on the information provided.” The circuit court continued: “Contrary to the defendant’s assertion, the court did not put ‘great weight’ on how *those* particular offenses affected the community. Rather, it put great weight on how the offenses with which the defendant was *charged* and for which he was *convicted* affected the community.” (Citation omitted.) The record conclusively shows that Smalley was not prejudiced by the lack of an objection given that the information relative to the uncharged offenses had no effect on sentencing.

Therefore,

IT IS ORDERED that the judgments 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*