



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

September 13, 2022

To:

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

2020AP1881-CR State of Wisconsin v. Theodore G. Reese, Jr. (L.C. # 2017CF3169)

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).

Theodore G. Reese, Jr. appeals a judgment of conviction and an order denying his postconviction motion. Reese argues that: (1) he is entitled to a new trial based on an error during closing argument; and (2) he received ineffective assistance of trial counsel during sentencing. After review of the briefs and record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).¹ Upon review, we affirm.

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

Ramsey Wheeler was shot and killed while purchasing marijuana. The complaint alleged that Reese and Jeffrey Ward were the perpetrators. After a jury trial, Reese was found guilty of first-degree reckless homicide with use of a dangerous weapon, as a party to a crime, and felony bail jumping. The circuit court sentenced Reese to thirty years of initial confinement and fifteen years of extended supervision. Reese moved for postconviction relief. The circuit court denied the motion without a hearing.

Reese first argues that he is entitled to a new trial due to an error during his closing argument. The factual underpinning for Reese's argument is as follows. At trial, Ward testified against Reese. The prosecutor asked Ward whether he had any prior convictions. Ward informed the jury that he had nine prior convictions, three of which were related to the incident leading to Wheeler's death. No additional information about the convictions was presented to the jury pursuant to WIS. STAT. § 906.09.² R.W., who was in the car with Wheeler when he was killed, also testified against Reese. The prosecutor also asked R.W. whether he had any prior convictions. R.W. informed the jury that he had two prior misdemeanor convictions. The prosecutor then asked R.W. what his convictions were. R.W. informed the jury that he had been convicted of operating while intoxicated and possession of marijuana.

² WISCONSIN STAT. § 906.09(1) provides:

For the purpose of attacking character for truthfulness, a witness may be asked whether the witness has ever been convicted of a crime or adjudicated delinquent and the number of such convictions or adjudications. If the witness's answers are consistent with the previous determination of the court ... then no further inquiry may be made unless it is for the purpose of rehabilitating the witness's character for truthfulness.

During closing argument, Reese's counsel pointed out to the jury that the State had asked R.W. what his prior convictions were, but did not ask Ward the same question:

[REESE'S COUNSEL]: By the way, the prosecutor asks [R.W.] about what he's got, his convictions, magically not Mr. Ward.

[PROSECUTOR]: Objection, Your Honor.

[REESE'S COUNSEL]: It was testified about, Judge.

[PROSECUTOR]: Not in regards to the second part, [which is] a violation of the statute.

THE COURT: Okay. The jury heard the testimony and will rely on [the] testimony and the defense will move on.

Reese's argument about how the preceding exchange constitutes reversible error is muddled. He appears to contend that he should receive a new trial either because the prosecutor's objection was somehow improper or because the circuit court improperly prevented his counsel from arguing that the jury should make a negative inference about Ward's credibility.

Reese's argument that he is entitled to a new trial based on this exchange during his closing argument is unavailing. When the prosecutor objected during Reese's closing argument, the circuit court did not tell the jury that it could not consider the point that Reese's counsel was making and it did not sustain the State's objection. The circuit court simply told the jury to rely on the testimony it heard and told Reese's counsel to move on with her argument. The circuit court made no ruling adverse to Reese. Counsel was allowed to make the argument that she wanted to make and there is no basis for reversal. Thus, there's nothing for this court to find erroneous.

Reese next argues that he received ineffective assistance of counsel because his counsel failed to present additional positive information about his background during sentencing.

See Strickland v. Washington, 466 U.S. 668, 687 (1984) (holding that to establish ineffective assistance of trial counsel, a defendant must show that counsel performed deficiently and the deficient performance was prejudicial). Reese submitted information favorable to him with his postconviction motion, including reports from several employers, his father, and his friend.

After reviewing the information Reese provided with the postconviction motion, the circuit court concluded that Reese was not prejudiced by the alleged deficient performance because the additional information would not have changed its sentence. *See id.* at 694 (holding that to establish prejudice, 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.”). The circuit court explained that it considered Reese’s positive attributes at sentencing, including his employment history and high level of education. The circuit court explained, however, that Reese’s “sharp decline into criminality following his graduation from high school permeated the proceedings and greatly overshadowed the positives. This killing did not have to happen. It should not have happened. But it did, despite [Reese’s] work history, despite his education and intelligence, and despite all the positive testimonials.” Reese’s argument that he received ineffective assistance of trial counsel fails because even if Reese’s counsel had presented the additional favorable information at sentencing, the circuit court ruled that the information would not have changed its sentence. Therefore, Reese cannot show that he was prejudiced.

Upon the foregoing,

IT IS ORDERED that the judgment and the 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