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DISTRICT I

December 6, 2022

To:

Hon. Stephanie Rothstein
Circuit Court Judge
Electronic Notice

John D. Flynn
Electronic Notice

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Michael S. Holzman
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Robert Probst
Electronic Notice

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

2021AP527-CR

State of Wisconsin v. Paul Lassa (L.C. # 2018CF3285)

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

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).

Paul Lassa appeals a judgment of conviction and an order denying his postconviction motion.¹ Based upon our review of the briefs and record, we conclude at conference that this

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 Lassa's postconviction motion.

case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).² We affirm.

Lassa was charged with two counts of second-degree sexual assault of a child under the age of sixteen. Pursuant to plea negotiations, Lassa pled guilty to child enticement (sexual contact) and third-degree sexual assault. The circuit court imposed sentences totaling ten years of initial confinement and ten years of extended supervision.

Postconviction, Lassa sought to withdraw his pleas based on trial counsel's alleged ineffectiveness in communicating with and advising Lassa. Lassa asserted that trial counsel promised him that in exchange for his guilty pleas, he would receive a probation sentence with some jail time as a condition of probation. Lassa additionally asserted that he relied on trial counsel's false representations when he waived his right to a jury trial. Consequently, he argued that his pleas were not voluntarily, knowingly, or intelligently made.

The circuit court held a *Machner* hearing.³ Both trial counsel and Lassa testified. The circuit court denied Lassa's plea withdrawal motion after finding that Lassa's testimony was not credible. Lassa appeals.

A defendant seeking to withdraw his or her plea after sentencing must prove by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice. *State v. Dillard*, 2014 WI 123, ¶36, 358 Wis. 2d 543, 859 N.W.2d 44. "One way to demonstrate manifest injustice is to establish that the defendant received ineffective assistance of counsel."

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

³ *State v. Machner*, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

Id., ¶84. The defendant must prove both that counsel’s conduct was deficient, or, outside the wide range of professionally competent assistance, and that counsel’s errors were prejudicial. See *Strickland v. Washington*, 466 U.S. 668, 687, 690 (1984). To prove prejudice in a plea withdrawal case like the one at bar, the defendant must demonstrate a reasonable probability that, but for counsel’s errors, he would not have pled guilty and would have insisted on going to trial. *Dillard*, 358 Wis. 2d 543, ¶¶95-96. We need not address both prongs of the *Strickland* test if the defendant fails to make a sufficient showing on either one. *Strickland*, 466 U.S. at 697.

We conclude that Lassa is not entitled to plea withdrawal because he has not shown that trial counsel performed deficiently. On appeal, Lassa continues to argue that trial counsel misinformed him and misrepresented material facts in order to induce his guilty pleas. He additionally argues that his pleas were not voluntarily made because he was badgered by trial counsel and was emotionally vulnerable. However, the circuit court discredited Lassa’s *Machner* hearing testimony, finding: “So we have a defendant here who is willing to—let’s just say play a little fast and loose with the facts.” Later, the circuit court described Lassa’s testimony “to be incredibly self-serving ... not credible and disingenuous.” The circuit court explained: “I deal with a lot of people, Mr. Lassa, who misrepresent things and try to manipulate people. I find that in my experience, you’re at the top of the list or very close.”

The circuit court held that there was no credibility to the claim that trial counsel made an inappropriate promise of an outcome or inappropriately badgered Lassa to take the pleas. The court’s credibility findings are not clearly erroneous and we must accept them. *State v. Domke*, 2011 WI 95, ¶58, 337 Wis. 2d 268, 805 N.W.2d 364.

In addition to the *Machner* hearing testimony, the record of the plea hearing supports the circuit court's factual findings and our conclusion that trial counsel did not perform deficiently. The plea hearing transcript reflects that on two occasions, the circuit court gave Lassa and trial counsel time to discuss the pleas. Lassa ultimately entered his pleas freely, voluntarily, and knowingly, after being told that the circuit court was not bound to any sentencing recommendations and could sentence Lassa up to the maximum possible penalty. In light of the foregoing, we need not analyze the prejudice prong of *Strickland*.

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