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DISTRICT IV

April 20, 2023

To:

Hon. Elliott M. Levine
Circuit Court Judge
Electronic Notice

Christine A. Remington
Electronic Notice

Tammy Pedretti
Clerk of Circuit Court
La Crosse County Courthouse
Electronic Notice

Christopher M. Cleaves 224464
New Lisbon Correctional Inst.
P.O. Box 2000
New Lisbon, WI 53950-2000

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

2021AP1993

State of Wisconsin v. Christopher M. Cleaves
(L.C. # 2015CF616)

Before Kloppenburg, Fitzpatrick, and Nashold, 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).

Christopher Cleaves appeals an order denying his postconviction motion filed under WIS. STAT. § 974.06 (2021-22),¹ and an order denying his motion for reconsideration. 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. We affirm.

After a trial in 2017, Cleaves was convicted of three counts of second-degree sexual assault of a child. He pursued postconviction relief under WIS. STAT. RULE 809.30, which

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

eventually led to a 2020 no-merit appeal decision in which we relieved his attorney from further representation. In 2021, Cleaves filed the postconviction motion and reconsideration motion now before us. The circuit court denied those motions without an evidentiary hearing.

Because the circuit court denied the motions without an evidentiary hearing, on appeal the question is whether Cleaves was entitled to such a hearing. *State v. Jackson*, 2023 WI 3, ¶8, 405 Wis. 2d 458, 983 N.W.2d 608. A postconviction motion is properly denied if it fails to allege facts which, if true, would entitle the defendant to relief, or if the record conclusively demonstrates that the defendant is not entitled to relief. *Id.*, ¶11.

On appeal, Cleaves argues that his postconviction counsel failed to provide effective assistance because postconviction counsel did not file a postconviction motion arguing that Cleaves' trial counsel was ineffective because she had a conflict of interest. The argument is based on trial counsel's motion to withdraw before trial, which the circuit court denied.

Cleaves argues that the motion to withdraw shows that trial counsel had an "ethical conflict of interest with Cleaves." However, for reasons we now explain, the facts that he alleges do not show an ethical conflict of interest with Cleaves and, therefore, even if they are true, he is not entitled to relief.

In the motion, counsel sought to withdraw because she and Cleaves had "a fundamental disagreement as to how to proceed on this matter." The motion continued: "In addition to other matters Defense counsel will not delve into due to ethical duties to Mr. Cleaves, the court is aware of the Defendant's filing of documents without notice to counsel and this impairs counsel's ability to effectively represent the defendant."

At the hearing on this motion, when the circuit court asked counsel if she had more to say about the motion, counsel said she did not think she could “say very much. I mean, I stated what I could in the motion, but I feel there’s an ethical conflict with me saying much more.”

Cleaves’ claim of a conflict of interest is based on an erroneous interpretation of the motion and transcript. Trial counsel’s reference to “an ethical conflict” was not a description of her reason for moving to withdraw. Instead, it was an explanation of her reason for not providing the circuit court with detailed information about her reason for moving to withdraw, which was, as stated in the motion, that she had a “fundamental disagreement” with Cleaves.

Attorneys are required to maintain the confidentiality of information related to their representation of the client. *See* SCR 20:1.6. By referring to an “ethical conflict” in her saying more, counsel was describing the way in which that ethical requirement of confidentiality prevented her from providing a more detailed description of the “fundamental disagreement” that she had with Cleaves about how to proceed. It was a conflict between counsel’s ethical duty of confidentiality and the usual attorney practice of providing a circuit court with a full factual basis to support a motion. Contrary to Cleaves’ claim that this shows ineffective assistance, it shows that counsel was attempting to follow ethical rules and not to cause prejudice to Cleaves by revealing information unnecessarily.

Accordingly, the facts that Cleaves has alleged about trial counsel, even if true, do not support a legal conclusion that there was a conflict of interest. Therefore, Cleaves would not have been entitled to an evidentiary hearing if his postconviction attorney had filed a postconviction motion on this basis, and his postconviction attorney was not ineffective by not filing such a motion.

Cleaves may also be arguing that his trial counsel’s “fundamental disagreement” with him was a conflict of interest. Cleaves asserts that the nature of their disagreement is shown by a letter to him from his trial counsel. In that letter, counsel stated that mistake of age was not a permitted defense to the charges, that she was ethically barred from presenting such a defense, and that she would not violate her ethical duties. This letter shows a conflict with Cleaves, but it does not create a conflict of interest, as that term is used legally. Even if these factual allegations about the nature of their disagreement are true, Cleaves would not be entitled to relief based on a legal argument that his attorney complied with ethical rules. The fact that her compliance with those rules may have prevented Cleaves from presenting evidence that he wanted to present, but was not permitted to present, is not legally a basis for relief.

To the extent that Cleaves may also be arguing that his appellate counsel was ineffective by not arguing on appeal that the circuit court failed to conduct a proper inquiry into counsel’s supposed conflict of interest, this argument also fails. It does so because, for the reasons discussed above, the circuit court had no reason to believe that counsel had a conflict of interest with Cleaves.

IT IS ORDERED that the orders appealed from are summarily affirmed under 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