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

October 3, 2023

To:

Hon. Mark A. Sanders
Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Craig S. Powell
Electronic Notice

Christine A. Remington
Electronic Notice

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

2022AP1075-CR State of Wisconsin v. Dale Orlando Huff (L.C. # 2017CF1834)

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

Dale Orlando Huff appeals a judgment convicting him of first-degree reckless homicide. He also appeals from the order denying his postconviction motion for relief.[1] 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 (2021-22).[2] Upon review, we affirm.

[1] The Honorable Mark A. Sanders entered the judgment of conviction. The Honorable Stephanie Rothstein entered the order denying Huff's postconviction motion.

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

BACKGROUND

The State initially charged Huff in Milwaukee County Circuit Court Case No. 2016CF4448 with delivery of heroin, possession with intent to deliver heroin, and possession of a firearm as a felon. The State later charged Huff in Milwaukee County Circuit Court Case No. 2017CF1834, with first-degree reckless homicide (Len Bias Law) related to the death of Matthew Sorgent. Both cases arose from the same investigation relating to Sorgent's death and were joined for trial. According to the facts in the record, Huff sold heroin to B.C., who in turn shared it with Sorgent. On September 17, 2016, Sorgent's mother found him dead in his home. The cause of death was determined to be acute heroin and fentanyl intoxication.

As a part of the police investigation, a known police source arranged to purchase heroin from Huff as part of a controlled buy. Officers supervised the controlled buy in the alley behind the duplex where Huff's wife lived with their children. Police watched Huff exit the duplex and meet with the source. Police immediately arrested Huff after the transaction was completed. The substance Huff delivered to B.C. in the controlled buy was later tested and determined to contain heroin—fentanyl was not detected.

At the time of the arrest, police asked Huff to consent to search the home he had exited just prior to the transaction. Huff refused, telling officers that the home belonged to his wife and he did not live there. Officers conducted a protective sweep of the home and then asked Huff's wife if she would consent to a search. She consented. As a result of the search, officers recovered a plastic bag containing fifty grams of heroin. Huff later consented to a search of his own home, where officers recovered a firearm.

Huff ultimately entered a guilty plea to first-degree reckless homicide. The State agreed to dismiss the remaining three charges. The circuit court sentenced Huff to twenty-two years and six months of initial confinement, followed by fifteen years of extended supervision.

Following sentencing, Huff filed a postconviction motion seeking to withdraw his guilty plea on the ground that he did not enter the plea voluntarily, knowingly, and intelligently. Huff argued that trial counsel rendered ineffective assistance for failing to file a motion to suppress evidence of the heroin found in his wife's home because it was found as a result of an illegal entry. Had counsel moved to suppress the evidence, he argued, the State would have been forced to drop the possession with intent charge. Thus, according to Huff, the value of negotiating the dismissal of the charge in plea negotiations "provided an illusory benefit." Huff also argued that a manifest injustice occurred when the State did not disclose a crime lab report showing that the heroin found in Huff's wife's home did not contain fentanyl.

The circuit court held a hearing on the motion where law enforcement, Huff's trial counsel, and Huff testified. Law enforcement officers testified that following Huff's arrest, they approached the residence from which Huff had earlier exited. The door was slightly open and the officers announced themselves. A female voice responded, stating that she could not come to the door because she was not fully clothed. The officers stated that they found it necessary to perform a protective sweep of the residence because, based on their experience, they thought additional drug paraphernalia and firearms were present at the property and because they thought the female—later identified as Huff's wife—may have been destroying evidence. After performing the protective sweep, they asked Huff's wife for consent to search the residence, which she granted.

Huff's trial counsel testified that she discussed the possibility of moving to suppress the heroin found in his wife's home. Huff told counsel that he did not want to involve his wife in any court proceedings and that he wanted his case resolved. Trial counsel also stated that she did not think there was a legal basis for the motion because Huff did not live at that home and she did not think Huff had standing to challenge the search. Trial counsel also explained that while she did not believe the State had a strong case as to the homicide, Huff "weighed the exposure if he was unsuccessful [at trial] versus on the drug cases because everything would have been tried," leading them to conclude that a plea was appropriate. Trial counsel also stated that she did not see the crime lab report at issue.

Huff contradicted trial counsel's testimony, stating that counsel believed the State had a strong case for the homicide charge. Huff stated that counsel's opinion was a factor in his decision to enter a guilty plea. Huff explained that he entered his plea because he believed that there was fentanyl in the drugs that he sold B.C. He said if he had known that the heroin found at his wife's home was pure heroin, he would not have pled guilty.

The postconviction court denied Huff's motion. The postconviction court did not find Huff's testimony credible and further found that counsel's performance did not prejudice Huff because a suppression motion would have been unsuccessful for multiple reasons. Specifically, the postconviction court found that Huff did not have standing to challenge any search of his wife's property; law enforcement's protective sweep of the property was reasonable; and Huff's wife gave the officers valid consent to search the property. As to the crime lab report, the postconviction court found that even if it were to assume a discovery violation, Huff could not prove prejudice because the report would not have changed the outcome of the case.

This appeal follows.

DISCUSSION

On appeal, Huff continues to argue that he is entitled to withdraw his plea on the basis of ineffective assistance of counsel and a discovery violation.

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." ***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. *See* ***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. *See* ***id.***, 466 U.S. at 697.

We conclude that Huff is not entitled to plea withdrawal. In discrediting Huff's testimony, the postconviction court noted that Huff was adamant about resolving his case without a trial and gave inaccurate testimony about how often he met with his trial counsel. The postconviction court found that regardless of whether counsel would have filed a pretrial suppression motion or whether the State had disclosed the crime lab report, the end result would likely have been the same because of Huff's determination not to go to trial. The record supports the postconviction court's findings. Huff's counsel testified in detail that Huff did not want his

wife involved in the proceedings and wanted to resolve his case as quickly and efficiently as possible. Counsel also testified that she discussed the possibility of filing pretrial motions as well as her perceived weakness in the State's case, but that Huff did not want to go to trial on all four of the initial charges. The postconviction court did not find Huff's testimony to the contrary credible. The postconviction court's credibility findings are not clearly erroneous and we must accept them. *See* ***State v. Domke***, 2011 WI 95, ¶58, 337 Wis. 2d 268, 805 N.W.2d 364.

Because we uphold the postconviction court's credibility determinations, we need not address the court's additional reasons for denying Huff's motion. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (stating that appellate courts should decide cases on the narrowest possible grounds).

For the foregoing reasons, we affirm.

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.

Samuel A. Christensen
Clerk of Court of Appeals