



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 IV**

May 9, 2024

To:

Hon. Julie Genovese  
Circuit Court Judge  
Electronic Notice

Michael J. Conway  
Electronic Notice

Hon. John M. Wood  
Circuit Court Judge  
Electronic Notice

Kathleen A. Lindgren  
Electronic Notice

Amanda Nelson  
Clerk of Circuit Court  
Rock County Courthouse  
Electronic Notice

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

---

2022AP1818-CR                      State of Wisconsin v. Thomas Jeffrey Bluhm (L.C. # 2019CF434)

Before Kloppenburg, P.J., Graham, 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).**

Thomas Jeffrey Bluhm appeals a judgment of conviction and an order denying his postconviction motion for resentencing on grounds of ineffective assistance of counsel. Based on 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).<sup>1</sup> We summarily affirm.

---

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

Bluhm pled guilty to homicide by intoxicated use of a vehicle and operating while intoxicated, causing injury, both as a second or subsequent OWI offense. He was sentenced to a total of 14 years of initial confinement and 17 years of extended supervision.

Bluhm moved for resentencing, arguing that his trial counsel was ineffective by failing to adequately prepare him for sentencing and failing to present supportive letters and statements by his family at the sentencing hearing. The circuit court held a *Machner*<sup>2</sup> hearing, at which both Bluhm and his trial counsel testified. At the conclusion of the hearing, the court found that Bluhm's trial counsel adequately prepared Bluhm for sentencing and made a strategic decision not to present supportive statements by Bluhm's family at the sentencing hearing. The court also found that Bluhm had not shown that his sentence would have been different absent his counsel's claimed deficiencies. The court therefore denied Bluhm's postconviction motion.

A claim of ineffective assistance of counsel requires a showing that trial counsel's performance was deficient and that the deficient performance was prejudicial. *State v. Mayo*, 2007 WI 78, ¶33, 301 Wis. 2d 642, 734 N.W.2d 115. Deficient performance is established by showing that trial counsel's representation fell below an objective standard of reasonableness. *State v. Wesley*, 2009 WI App 118, ¶23, 321 Wis. 2d 151, 772 N.W.2d 232. Prejudice is established by showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* at 694. The issues of deficient

---

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

performance and prejudice present mixed questions of fact and law. *State v. Sanchez*, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). Findings of historical fact will not be upset unless they are clearly erroneous, but the questions of whether counsel’s performance was deficient or prejudicial are legal issues we review independently. *Id.* at 236-37.

As to Bluhm’s claim that his trial counsel failed to adequately prepare him for sentencing, we conclude that Bluhm has not shown either deficient performance or prejudice. At the conclusion of the *Machner* hearing, the circuit court made the following factual findings as to counsel’s conduct and strategy. Bluhm’s counsel met with Bluhm to prepare him for his presentencing investigation (PSI) interview, telling him “what he needed to say to the presentence investigator about being remorseful, taking full responsibility, and not trying to deflect in any way,” and followed standard practice not to attend the PSI interview with Bluhm. Counsel also met with Bluhm and prepared him for the sentencing hearing, advising him to show remorse.<sup>3</sup> Based on these factual findings, Bluhm cannot show deficient performance.

Nor can Bluhm show prejudice, because he does not explain what he would have said differently had his counsel more thoroughly prepared him. During his sentencing allocution, Bluhm expressed his remorse for his conduct, and the circuit court found that Bluhm was remorseful and considered that remorse in imposing sentence. The sentencing court’s comments indicate that it weighed most heavily the seriousness of the offenses, Bluhm’s criminal history,

---

<sup>3</sup> Bluhm argues that, contrary to his counsel’s testimony, counsel did not meet with him and prepare him for sentencing, and that rather than develop a valid sentencing strategy, his trial counsel simply viewed his case as a “lost cause.” However, Bluhm has not provided any basis to disturb the circuit court’s factual findings and credibility determinations based on the testimony at the *Machner* hearing. See *State v. Carter*, 2010 WI 40, ¶19, 324 Wis. 2d 640, 782 N.W.2d 695 (findings of fact for the trial court include trial counsel’s conduct and strategy); *State v. Ayala*, 2011 WI App 6, ¶10, 331 Wis. 2d 171, 793 N.W.2d 511 (circuit court is the ultimate arbiter of the credibility of witnesses).

and the poor outcome of his prior attempts at treatment and his continued denial as to his issues with alcohol. The court also took into account Bluhm's remorse and recognized that he has "redeeming qualities." The court imposed 14 years of initial confinement and 17 years of extended supervision, out of a possible maximum sentence of 28 years of initial confinement and 18 years of extended supervision. Bluhm has not shown that any additional statements he would have made in allocution would have led to a lesser sentence. See *State v. Erickson*, 227 Wis. 2d 758, 774, 596 N.W.2d 749 (1999) (to establish prejudice, it is not enough for a defendant to speculate on what the result of the proceeding might have been if his attorney had not erred).

As to Bluhm's claim that his trial counsel failed to present supportive letters and statements by Bluhm's family at the sentencing hearing, we also conclude that Bluhm has not shown either deficient performance or prejudice.<sup>4</sup> The circuit court found that counsel considered but decided not to introduce supportive statements by Bluhm's family at sentencing after considering information in the PSI as to the family's history of issues with alcohol abuse, because counsel determined that highlighting Bluhm's family's positive opinion of him could raise issues about their participation in his alcohol abuse that would be contrary to the defense strategy for Blum to show genuine remorse for his actions. Based on these findings, Bluhm cannot show deficient performance. See *State v. Sholar*, 2018 WI 53, ¶54, 381 Wis. 2d 560, 912 N.W.2d 89 ("If trial counsel testifies at the *Machner* hearing that the choice under attack was

---

<sup>4</sup> Bluhm acknowledges that he does not know exactly what his family members would have offered in their statements, but contends that they would have provided more thorough relevant information to the sentencing court. At the postconviction motion hearing, Bluhm offered letters by his mother and his children's maternal aunt, which he asserted represented the substance of the letters they provided to trial counsel for the sentencing hearing, attesting to Bluhm's good character, his struggle with alcohol, his family's alcohol issues, and his then-partner's substance abuse issues. Additionally, several other of Bluhm's family members testified that they had provided letters to counsel for the sentencing hearing and that they were present and willing to provide positive character statements at sentencing.

based on a trial strategy, which the circuit court finds reasonable, it is ‘virtually unassailable’ and the ineffective assistance claim fails.” (quoted sources omitted)).

Nor can Bluhm show prejudice. At the sentencing hearing, Bluhm’s counsel argued that the goal of sentencing should be to help Bluhm become a better person; emphasized that Bluhm was remorseful and had taken responsibility for his actions by pleading guilty; and asserted that Bluhm’s actions caused a loss both to the victim’s family and Bluhm’s own family, who loved him. Counsel also stated that there were a large number of people in court in support of Bluhm. Bluhm does not explain how letters and statements from his family as to their opinion of his good character would have resulted in a lesser sentence given, as noted above, the court’s having weighed most heavily the seriousness of the offenses, Bluhm’s criminal history, and his issues with alcohol abuse.

Therefore,

IT IS ORDERED that the judgment of conviction and order denying postconviction relief are summarily affirmed pursuant to 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*