

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

April 27, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**No. 99-2168-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIAM SID DUPREE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, P.J., Vergeront and Roggensack, JJ.

¶1 PER CURIAM. William Sid DuPree appeals from a judgment convicting him of felony bail jumping. He also appeals from the order denying his motion for postconviction relief. The issues are whether he received effective assistance from trial counsel, and whether he should receive a new trial in the interest of justice. We affirm.

¶2 A police officer stopped DuPree for a traffic violation and arrested him for an outstanding warrant. Before he was placed in the police car, hand-cuffed, and transported from the scene, the officer conducted a pat-down search and discovered a white cocaine-like substance in some plastic baggies. After taking DuPree to the station, the officer checked the back seat of his squad car and found three crack pipes. A search of DuPree's person revealed two small pieces of Choreboy in his billfold. Choreboy is a cleaning implement used to scour metal objects. It is also used as a filter in crack pipes. The Choreboy in DuPree's billfold was sized and shaped in a way that it appeared to fit the crack pipes found in the squad car. It was also burned.

¶3 The cocaine-like substance found in DuPree's pocket was apparently not cocaine, and no charges resulted from its discovery. However, the State charged DuPree with misdemeanor possession of drug paraphernalia, for the crack pipes and Choreboy, and felony bail jumping for committing the misdemeanor possession while on bail for a felony charge.

¶4 Before trial the state dismissed the misdemeanor charge and agreed not to mention the unidentified substance seized during the pat-down search. DuPree stipulated that he was on bail when arrested, and that he knew that a condition of bail was to avoid committing any crime. Consequently, the sole issue for trial was whether DuPree possessed drug paraphernalia when he was stopped and arrested.

¶5 At trial the jury heard testimony concerning discovery of the crack pipes and Choreboy. On direct examination DuPree testified that the arresting officer searched him and "found what he believed to be some type of drug paraphernalia, which was not, and arrested me." The jury heard no other reference

to the fact that the arresting officer searched DuPree before placing him in the squad car, without discovering the crack pipes. DuPree further testified that he used the Choreboy found in his billfold to clean jewelry, knives, and rings. No other witness appeared for the defense, and the jury found DuPree guilty.

¶6 DuPree subsequently filed a postconviction motion alleging ineffective assistance of trial counsel for failing to adequately elicit testimony that DuPree was searched before the crack pipes were found in the car, and failing to produce a witness who would have testified to DuPree's use of Choreboy for cleaning household items such as pots and pans. The trial court denied relief, resulting in this appeal.

¶7 To prove ineffective assistance of counsel, a defendant must not only show counsel's deficient performance, but that counsel's errors or omissions prejudiced the defense. *See State v. Pitsch*, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985). Prejudice results when counsel's errors deprive the defendant of a fair trial with a reliable result. *See id.* at 640-41. Whether counsel's errors and omissions were prejudicial to the defendant is a question of law. *See id.* at 634.

¶8 We need not determine whether counsel provided ineffective representation, because DuPree cannot reasonably claim prejudice from the counsel's alleged errors. To find DuPree guilty, the jury had only to conclude that the Choreboy he admittedly possessed was drug paraphernalia. The undisputed facts before the jury included: (1) that the Choreboy pieces were found in DuPree's billfold, (2) that the pieces were burned, (3) that Choreboy is used as a crack-pipe filter, and (4) that DuPree's Choreboy pieces were sized and rolled into the shape of a crack-pipe filter. With that information before it, no reasonable jury

could have failed to convict DuPree, even with additional exculpatory testimony on the crack pipe issue, and a witness to DuPree's use of Choreboy in his kitchen.

¶9 For the same reason, we deny DuPree's request for a new trial in the interest of justice. The matter was fully and fairly tried on facts that overwhelmingly prove DuPree's guilt.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (1997-98).

