COURT OF APPEALS
DECISION
DATED AND FILED

July 7, 2009

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2514-CR **Cir. Ct. No. 2002CF2998**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIE L. PARCHMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: JEFFREY A. CONEN, MEL FLANAGAN and PATRICIA D. MCMAHON, Judges. *Affirmed*.

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 KESSLER, J. Willie L. Parchman appeals from a judgment of conviction for one count of first-degree intentional homicide, party to a crime, contrary to WIS. STAT. §§ 940.01(1)(a) and 939.05 (1999-2000).[1] He also appeals from orders denying his motion and supplemental motion for postconviction relief. Parchman argues that the trial court[2] erroneously exercised its discretion when it denied him an evidentiary hearing to explore the following bases for granting him a new trial: (1) the State failed to fully disclose its prosecution agreements with two witnesses; (2) there is newly discovered evidence that Parchman's brother committed the crime;[3] (3) Parchman was denied the effective assistance of trial counsel;[4] and (4) the real controversy was not fully tried and therefore the interest of justice requires a new trial. We reject Parchman's arguments and affirm the judgment and orders.

BACKGROUND

¶2 On October 25, 2000, Larry Wallace[5] was killed in the basement of a home located at 1138 West Atkinson in Milwaukee, where a man named Coree

[1] All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] The Honorable Jeffrey A. Conen conducted the trial and imposed sentence. The Honorable Mel Flanagan decided the first postconviction motion. The Honorable Patricia D. McMahon decided the supplemental postconviction motion.

[3] The name of Parchman's brother is William Parchman, which we note from the outset because of its similarity to the appellant's name, Willie Parchman. In this opinion, we will refer to the brother as "William" and the appellant as "Parchman."

[4] At trial, two lawyers from the same firm represented Parchman. In this opinion, the term "trial counsel" sometimes refers to one of the attorneys and sometimes refers to both.

[5] Because there are numerous members of the Wallace family mentioned in this opinion, we will refer to each individual using his first name.

Blount lived. The cause of Larry's death was a gunshot wound to the back of the head. Although Larry was killed in 2000, his body was not recovered until April 14, 2002, when it was found in a waterbed mattress liner in the trunk of a 1989 gray Oldsmobile Delta that had been abandoned, its trunk lid propped open.

¶3 The investigation into Larry's disappearance and death involved many witnesses, including some who admitted being present for the shooting. Ultimately, Parchman alone was charged with first-degree intentional homicide as a party to a crime, as well as being a felon in possession of a firearm. The State's theory was that Parchman shot Larry in the basement and that in doing so, he committed first-degree homicide and possessed a firearm. The State's case included the testimony of two men, Tavaras White and Kendrick Jones, who admitted being present during the homicide but were not charged with any crimes in connection with Larry's death. However, both men were facing other criminal charges and their cooperation in this case positively affected their own cases.

¶4 At trial, the jury heard from many witnesses. Most significantly, the jury learned that the day before Larry's death, Parchman and Blount were held at gunpoint in a house by three men: Terrance Wallace, the brother of Larry; and Torrance Wallace and James Ferguson, both first cousins of Larry. Parchman knew the three men, having grown up in the same community. Parchman was duct-taped to a chair in the kitchen. The three men held a gun to Parchman's head and threatened to kill him. They took money and a very expensive necklace from Parchman and they demanded to know where his other money was. Blount was also threatened. He fought back and a scuffle ensued. Ultimately, Parchman and Blount escaped from the house, but not before Blount was shot twice in the leg. Parchman did not contact the police or file a complaint about the incident.

¶5 The next day, October 25, 2000, Larry disappeared. He was last seen borrowing a car from a friend. The borrowed car was abandoned and found days later.

¶6 Also on October 25, at 4:22 p.m., police responded to reports of suspicious activity at a house located in the 5500 block of North 33rd Street. A neighbor had observed people going in and out of a house, taking items to two cars in the area. Officer Maurice Woulfe testified that he pulled his squad car into an alley and saw two men, who ran when they saw the squad car. Woulfe and another officer chased one of the men, Parchman, and apprehended him. Parchman was taken into custody and ultimately was issued a municipal citation for resisting/obstructing an officer.

¶7 During the course of the chase, Woulfe recovered two loaded handguns. He also found a box of clothing under a truck in the area. Woulfe took note of the VIN number of a 1989 gray Oldsmobile Delta with no license plates that was parked in the area, but he left the car at the scene as there was no evidence that a crime had been committed. The car was later moved and ultimately was towed away. It was later retrieved from the tow lot by a man named Clifton Pope.[6] Eighteen months later, the car was found abandoned, with its trunk open, revealing Larry's body.

¶8 One of the State's key witnesses, White, testified that he was present when Larry was shot. Specifically, he said he was at the home at 1138 West Atkinson when three individuals arrived: Parchman, a woman and a man White

[6] The circumstances of the car's retrieval from the tow lot are not crucial to our decision and, therefore, we do not discuss them further.

did not know (Larry). Parchman and two other men who were already in the home, Joel Rhodes and Jones, went into the basement. Someone called upstairs and asked Larry to come downstairs. White testified that Larry walked down the basement stairs and White followed. White said he saw Jones, Rhodes and Parchman on the stairs or in the basement. White said he saw Parchman fire shots at Larry. White said that he, Jones, Rhodes and Parchman put Larry's body in a waterbed mattress and cleaned up the basement. Then, Jones, Rhodes and Parchman put the body in the trunk of Rhodes' Pontiac Grand Prix.

¶9 White said they drove the Grand Prix to 33rd and Silver Spring so they could transfer the body to White's 1989 Oldsmobile Delta. White and Parchman went to a gas station to purchase cleaning supplies to clean up fingerprints and blood. White testified that he helped put the body in the trunk of his Oldsmobile Delta.

¶10 White said that he, Rhodes, Jones and Parchman went into a nearby house that belonged to Parchman's brother. Rhodes and Jones left. Minutes later, as White and Parchman left through the back door of the house and entered the alley, a police cruiser arrived.[7] Both White and Parchman ran away. The police caught Parchman and he was arrested.

¶11 Jones also testified at trial. Jones said he, Parchman and Rhodes went into the basement. He said that Parchman told Jones to go upstairs and get Larry and bring him downstairs. Jones said as he walked Larry down to the

[7] The police arrived in response to a call from a neighbor reporting suspicious activity, as noted earlier in this opinion.

basement, Parchman stepped behind Larry and in front of Jones, and then Parchman raised a gun to the back of Larry's head and shot him.

¶12 Jones said he and Parchman went to Kohl's to purchase cleaning supplies. When they returned, they put the body in the waterbed and carried it to the trunk of the Grand Prix. Jones said he walked to 13th Street and Capitol Drive, where they picked up White's car and also burned some of Rhodes' clothes. Then they drove to 33rd and Silver Spring, where Parchman lived, and transferred Larry's body from the Grand Prix to the Oldsmobile Delta. Just before the police arrived to investigate a report of suspicious activity, Jones and Rhodes left in Rhodes' car.

¶13 The jury also heard about several statements that Parchman made to the police. At first, Parchman denied he had been the victim of a robbery that occurred on October 24, 2000. Later, he admitted he and Blount had been robbed. Parchman never admitted shooting Larry and, in fact, told Detective Scott Lange that he was not sure what happened to Larry and had no idea where Larry went. However, Detective Lawrence DeValkenaere testified that Parchman subsequently told him that he: "knows [the police] have a case and people have been talking" about Larry; "has information about at least three other homicides"; and "wants to know what kind of deal would be on the table first."[8] Finally, Detective Kenneth Smith testified that Parchman told him about talking with Larry the day after Parchman was robbed. Smith read to the jury from his written report of his interview with Parchman, stating:

[8] At trial, DeValkenaere read these statements from the written report that he generated after he interviewed Parchman on May 30, 2002.

> [Parchman] was in a car with [a man named] DeCarlos Young, and they saw Larry Wallace in a car. Parchman talked to Larry Wallace about what happened the day before, but [Larry] said he didn't know anything about it.
>
> DeCarlos got in the car with Larry Wallace, who willing[ly] went with them to [Blount's] house. That's when things got bad.
>
> [Parchman] stated that he will tell us the rest of the story later on.

Smith further testified: "[W]hen [Parchman] said 'That's when things got bad,' he put his head into his hands, and I just stopped, and he said he would tell us the rest later."

¶14 The jury also heard testimony from numerous individuals who claimed to have heard statements from the four men who were in the basement when Larry was killed. Monchello Louis testified that a couple weeks after the homicide, Parchman told Louis that he had shot Larry in the head. Arthur Armon testified that Parchman admitted killing someone in retaliation for what the Wallaces had done to him. Ernest Lane claimed that Parchman made inculpatory statements about Larry's disappearance, such as telling Lane that Parchman had lost sleep over the matter and that "there's nothing he can do about what already happened. What's done is done." Finally, the defense called Jeffrey Moore, who testified that Rhodes ordered Jones to falsely implicate Parchman in the homicide.

¶15 The only other witness for the defense was Charles Bishop, a former member of the Ghetto Boy gang, who testified concerning gang punishments that

customarily were administered in basements by Rhodes, White, Jones and another man.[9]

¶16 At closing argument, the State argued to the jury that the evidence supported the State's theory that Parchman had shot Larry. However, the State acknowledged that Parchman was charged as a party to the crime and argued that if the jury believed Parchman was there, wanted Larry killed and helped with the crime, but did not actually pull the trigger, Parchman would still be guilty as an aider and abettor. The State emphasized that Larry's body was taken to Parchman's home so that it could be transferred to the Oldsmobile Delta and that Parchman was caught running away from the police in the alley behind the home.

¶17 The defense theory was that Parchman was not present for the shooting and that members of the Ghetto Boys were blaming the homicide on him to keep themselves out of jail. Defense counsel suggested that after Parchman and Young dropped Larry at Blount's house, they left. Counsel further argued that the State's witnesses were incredible and had falsely testified that Parchman shot Larry, in order to save themselves jail time.

¶18 The jury found Parchman guilty of first-degree intentional homicide, party to a crime, but acquitted him of the charge of being a felon in possession of a weapon. The defense moved for judgment notwithstanding the verdict on grounds that the verdict was perverse because Parchman was acquitted of possessing a gun, but found guilty on the homicide charge. The trial court denied the motion, noting

[9] Testimony at trial indicated that Rhodes, White and Jones were all members of the Ghetto Boy gang. Parchman was not a member of the gang.

the possible explanation that the jury found that Parchman ordered the homicide but did not pull the trigger himself.

¶19 At sentencing, the trial court again discussed the guilty and not guilty verdicts. The court stated that it was clear that "the jury believed something other than the fact that Willie Parchman executed Larry Wallace on his own." The court said that if the jury had convicted Parchman on both counts, the court would likely have imposed a life sentence without the possibility of extended supervision. However, given the split verdict, the court imposed a life sentence with the possibility of extended supervision after thirty years.

¶20 Parchman filed a motion for postconviction relief on numerous grounds, including: (1) there was insufficient evidence to sustain the conviction for first-degree intentional homicide because the jury implicitly found Parchman was not the shooter; (2) the real controversy was not fully tried; (3) the State presented false testimony; (4) newly discovered evidence suggests Parchman is innocent;[10] and (5) Parchman's two trial attorneys provided ineffective assistance. The trial court denied the motion without a hearing, adopting the State's brief as its decision on the motion.

¶21 Parchman appealed, but then moved to dismiss his appeal so that he could file a supplemental postconviction motion; we granted the motion. Parchman then filed a supplemental postconviction motion in the trial court in which he alleged that "certain post-trial developments []constitute[d] strong

[10] Parchman's argument concerning actual innocence was that White and Jones had perjured themselves and falsely implicated Parchman. Parchman asserted that "[e]vidence unearthed since trial points to his brother, William Parchman, as the shooter." The various affidavits introduced by both parties during the postconviction process will be discussed *infra.*

impeachment of the State's weak case." (Emphasis omitted.) Specifically, he argued that "[v]irtually every one of the State's key witnesses against Mr. Parchman has now been impeached by the statements of others and/or recanted his own testimony…. If a new trial were held today acquittal is a near certainty." The trial court denied Parchman's supplemental postconviction motion without a hearing. This appeal follows.

STANDARD OF REVIEW

¶22 Parchman argues the trial court erroneously exercised its discretion when it denied his postconviction motions without a hearing. A defendant seeking postconviction relief is not entitled to an evidentiary hearing merely because he requests one. ***State v. Allen***, 2004 WI 106, ¶10, 274 Wis. 2d 568, 682 N.W.2d 433. ***Allen*** explained the applicable legal standards, including our standard of review:

> Whether a defendant's postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review. First, we determine whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief. This is a question of law that we review de novo. If the motion raises such facts, the [trial] court must hold an evidentiary hearing. However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the [trial] court has the discretion to grant or deny a hearing. We require the [trial] court "to form its independent judgment after a review of the record and pleadings and to support its decision by written opinion." We review a [trial] court's discretionary decisions under the deferential erroneous exercise of discretion standard.

Id., ¶9 (citations omitted).

DISCUSSION

¶23 Parchman argues that the trial court erroneously exercised its discretion when it denied his request for an evidentiary hearing to explore the following bases for granting him a new trial: (1) the State failed to fully disclose its prosecution agreements with two witnesses; (2) there is newly discovered evidence that Parchman's brother William committed the crime; (3) Parchman was denied the effective assistance of trial counsel; and (4) the real controversy was not fully tried and therefore the interest of justice requires a new trial. We examine each issue in turn.

I. Disclosure of the prosecution agreements with two witnesses.

¶24 Parchman argues that the State failed to fully and completely disclose the terms of its plea agreements with prosecution witnesses Louis and Jones. We begin with Louis, who told the jury that a couple weeks after the homicide, Parchman told him that he had shot Larry in the head.

A. Witness Louis.

¶25 On June 20, 2003, prior to Parchman's trial, the prosecutor in Parchman's case, Bruce Becker, wrote a letter to Parchman's trial counsel that referenced two statements from Louis that were being turned over to Parchman. The letter also described a plea agreement that Louis had reached with the State in an unrelated criminal case and an explanation of how Louis volunteered to testify in Parchman's case. Becker's letter explained:

> I received a telephone message … [from another prosecutor] … stating … that Mr. Louis's attorney … had told [the other prosecutor] that Louis wished to provide information about a case that I had coming up. I then spoke with [the other prosecutor and Louis's trial counsel].

> Their case is now apparently resolved. It is my understanding that Mr. Louis will be pleading guilty to the charge against him … and the State will be recommending nine years of confinement plus a period of extended supervision, the length of which I do not recall. Additionally, the State will take no position whether the court should impose the sentence concurrently or consecutively to a prison sentence that Mr. Louis is presently serving. At the time of sentencing, the State will advise the court of whatever information or assistance Mr. Louis provides in regard to the Willie Parchman case. [The other prosecutor and Louis's trial counsel], of course, know the precise details of the agreement.

¶26 Several weeks later, on July 14, 2003, Louis testified at Parchman's trial. Louis was cross-examined by trial counsel about whether he was testifying in order to help his criminal case. The following exchange occurred:

> Q You are testifying here because you were in court the other day and your lawyer said my client wants to cut a deal with the State and he will talk to a detective about Willie Parchman?
>
> A They told me they couldn't cut no deal. All I know is I'm getting no deal. I'm talking about the detective. I'm talking about the attorney that represent[s] me. [My attorney] told me that the State couldn't cut me no deal, he couldn't do nothing. That is not the reason I'm on the stand right now, for no deal, I don't know nothing about no deal.
>
> Q You are on the stand because you are just a good citizen, right?
>
> A I'm on the stand because I want to put a lot of things behind me, and I just want to move forward with my life plan….
>
> Q You can say that at your sentencing, sir, but right now I'm asking you if you are here hoping to put yourself in the good graces on a case you have; isn't that true?
>
> A I mean, if it help[s] me, then it will help me, but, you know, I'm not depending on no promises because no promises were made to me. I'm not depending on nothing.

> Q Weren't you set for a hearing and your attorney advised the DA that you wished to provide information about the Parchman case in June of this year?
>
> A I don't remember him specifically saying that.
>
> Q Do you recall being in court on June 19, 2003 … and you withdrew your motion on that date?
>
> A Yes. Yes, I do.
>
> Q Do you think [the law enforcement officer in court during the Parchman trial] just happened to go visit you on that date to talk to you about something?
>
> A No.
>
> Q Because you want something for your testimony?
>
> A Yeah. Look, yes, I do. I'm not going to do—Yes, I do.
>
> Q You just did. You told us you didn't want anything?
>
> A Look, I said if it can help me, then I would take anything that come if it can help me but I'm not depending on nothing. I'm not depending on anything because they didn't promise me anything. They didn't tell me they would give me anything, but if it could help me, I will take it. If me testifying about the truth and the facts of Willie Parchman can help me, then I would. If it would help me, then I would accept it.

¶27 One month after testifying at Parchman's trial, Louis pled guilty. At the plea hearing, the prosecutor (not the same individual in Parchman's case) recited the plea agreement and added, "The defendant also would cooperate with police and testify if needed in a homicide case being handled by ADA Bruce Becker." Louis's trial counsel told the court that the testimony had already been given. Later, at Louis's sentencing, Becker spoke on Louis's behalf. Becker explained that he learned from a fellow prosecutor that Louis and his trial counsel:

> had indicated that they had information and they were willing to provide that. So I went and spoke with them.

> [Trial counsel] indicated that they're willing to do that just on the premise that they will be able to come before this Court here today and say that they've cooperated with the state and the prosecution.
>
> Mr. Louis did testify against Mr. Parchman. He provided some testimony that implicated Mr. Parchman…. I'm sure [testifying] was not an easy choice for Mr. Louis to make … knowing Mr. Parchman may be incarcerated in the same prison system as himself. But he did testify and I believe he did everything that we asked of him as far as testifying. So we would ask the Court to consider that when imposing sentence.

¶28 In his postconviction motion, Parchman asserted that the State had engaged in misconduct when it "failed to fully and accurately disclose the terms of its plea agreement" with Louis and then failed to "correct [Louis's trial] testimony that it knew or should have known was false." Although Parchman's motion did not allege ineffective assistance of trial counsel, he argued that the facts concerning the plea agreement were similar to those presented in ***State v. Delgado***, 194 Wis. 2d 737, 535 N.W.2d 450 (Ct. App. 1995), where we granted the defendant a new trial after concluding that the defendant had been denied the effective assistance of trial counsel because counsel failed "to impeach the State's principal witness with readily available evidence that would have shown, first, that the witness had been promised substantial consideration in exchange for his testimony and, second, that the witness lied about whether he had been promised anything." *See* ***id.*** at 741.

¶29 We conclude that the trial court did not erroneously exercise its discretion when it denied this part of Parchman's first postconviction motion without a hearing because the record "conclusively demonstrates that the defendant is not entitled to relief." *See* ***Allen***, 274 Wis. 2d 568, ¶9.

¶30 First, to the extent Parchman is asserting that the prosecutor failed to tell Parchman about the plea agreement, we disagree. It is undisputed that the prosecutor Becker wrote a letter to trial counsel about Louis's plea agreement, noting that at sentencing the State would "advise the court of whatever information or assistance Mr. Louis provides in regard to the Willie Parchman case." Becker also indicated that Louis's prosecutor and trial counsel had "more precise" details about the agreement, leaving the door open for Parchman's trial counsel to seek out more specifics if desired. At Louis's sentencing, Becker's summation of Louis's plea agreement was essentially consistent with the letter he wrote to Parchman's trial counsel. Becker told the sentencing court that Louis and his trial counsel told Becker that Louis would testify and would therefore "be able to come before this Court here today and say that they've cooperated with the state and the prosecution." Thus, we reject the suggestion that Becker kept information about the plea agreement from Parchman.

¶31 Parchman's second complaint is that the State "failed to correct" Louis's testimony at trial when Louis denied that any deal had been made. However, there is nothing in the record to suggest that Becker had any more information about Louis's agreement than what was already disclosed to trial counsel, and trial counsel used that information to effectively cross-examine Louis. Ultimately, Louis admitted that he was aware that his testimony could help his own criminal case. If trial counsel had wanted to, he could have asked Louis additional questions about exactly what the State had agreed to do at sentencing, but trial counsel did not. Parchman does not identify what it expected the State to do at that point in the testimony, but he implies the State should have taken some action. We are unconvinced that the onus was on the State to flesh out additional

details about a plea agreement of which trial counsel was aware and which counsel chose not to address further.

B. Witness Jones.

¶32 In his opening appellate brief, following his analysis of Louis's testimony, Parchman asserts that "[s]imilar factors are present concerning Kendrick Jones' testimony." Parchman expresses frustration that Jones received a light sentence in an unrelated criminal case and quotes Jones's sentencing judge, who acknowledged that without Jones's cooperation in the Parchman case Jones would have received a longer sentence. However, Parchman does not explain what, if anything, the State failed to disclose about Jones's deal with the State, or what it expected the State to do differently at trial. In his reply brief, Parchman further explains his concerns. First, he states that "when Kendrick Jones told the jury that he had no way out of jail this was later shown to be untrue." Presumably Parchman is referring to the fact that Jones's sentence in his criminal case was ultimately a time-served disposition (Jones had already served thirteen months in jail pending his plea and sentencing). Second, Parchman takes issue with the State's comments in closing argument that Jones was no longer on the streets of Milwaukee "snatching up people," as he was now "in custody and is going to be sentenced."

¶33 We reject Parchman's arguments. He has failed to fully explain how the State failed to disclose information about Jones's plea agreement or what the State should have done differently at trial. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address arguments that are inadequately developed). He has not identified any objections made by trial counsel concerning Jones's testimony and he has not alleged trial

court error or trial counsel ineffectiveness. *See* ***id.*** We discern no basis for relief and, therefore, agree with the trial court that this part of Parchman's postconviction relief was properly denied without a hearing. *See* ***Allen***, 274 Wis. 2d 568, ¶9.

II. Newly discovered evidence.

¶34 Parchman claims he is entitled to a new trial based on newly discovered evidence. "In order to set aside a judgment of conviction based on newly-discovered evidence, the newly-discovered evidence must be sufficient to establish that a defendant's conviction was a 'manifest injustice.'" ***State v. Plude***, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42 (citation omitted). In ***State v. Edmunds***, we summarized the applicable legal standards:

> To obtain a new trial based on newly discovered evidence, a defendant must establish by clear and convincing evidence that "(1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." Once those four criteria have been established, the court looks to "whether a reasonable probability exists that a different result would be reached in a trial." The reasonable probability factor need not be established by clear and convincing evidence, as it contains its own burden of proof.

Id., 2008 WI App 33, ¶13, 308 Wis. 2d 374, 746 N.W.2d 590 (citations omitted).

¶35 In his postconviction motion, Parchman offered a brief argument asserting that an affidavit from an investigator hired by the defense constitutes newly discovered evidence that his brother William, and not Parchman, was the shooter. In the affidavit, investigator Mary Taylor explains how she spoke with two inmates in 2006 who claimed to have information relevant to Parchman's case.

¶36 Taylor's affidavit said that Erik Moore told her he had known both Parchman and William for thirteen years and that he spoke with William in April or May of 2003, which would have been before Parchman's trial. Taylor's affidavit states that Moore told her that William said: William shot Larry; Rhodes, Jones and White were present; and William did not want to tell the police because he feared going to prison. Taylor said Moore said he was willing to testify about his conversation with William.

¶37 Taylor's affidavit said she also spoke on two occasions with George Owens, who said he knows both Parchman and William. Taylor said Owens told her the following: he and William visited Parchman in prison; Owens heard William say that he was present when Larry was killed and that Parchman was not present at, or involved in, the homicide; Owens asked William if he killed Larry but William avoided the topic; William told Owen that he planned to tell Parchman's trial counsel about his own involvement but then backed out; Owens has observed William becoming paranoid and has heard William complain about sleepless nights; and William once told Owens, in reference to Larry, "we domed him," meaning that Larry was shot in the head. Taylor said Owens said he was willing to testify about his conversations with William.

¶38 Parchman's postconviction motion asserted that these statements constituted newly discovered evidence that entitles him to a new trial. He recited the five factors he was required to establish in order to be granted a new trial based on newly discovered evidence, but he made no attempt to explain how each factor was satisfied. In doing so, Parchman failed to prove that he had met the test for newly discovered evidence and the trial court did not erroneously exercise its discretion when it denied Parchman's motion without a hearing.

¶39 Parchman did not attempt to explain how the evidence was newly discovered, except to indicate that William allegedly made inculpatory statements after trial. However, the record reveals that the defense was aware *before trial* that William might have been involved in the crime. An investigator for the defense conducted a pre-trial interview with William. According to that investigator's report, which Parchman also introduced with his postconviction motion, William admitted to the investigator that he was present for the shooting. William told the investigator that both he and Parchman met up with Larry, went with him to Blount's house and were present when Larry made calls concerning the necklace. William said Parchman left approximately thirty minutes after they arrived and was not present when Larry was shot. William said that the shooter was Jones and that White and Rhodes were also present.

¶40 Parchman listed both William and Owens on his pre-trial witness list, but he did not call either witness at trial. His postconviction motion made no attempt to explain how the post-trial statements concerning William's involvement were newly discovered evidence. Similarly, Parchman also failed to explain or offer any proof that he was "'not negligent in seeking evidence.'" *See* ***Edmunds***, 308 Wis. 2d 374, ¶13 (citation omitted). With William and Owen on the witness list, Parchman was on notice they could be fact witnesses in the case. Further, Moore told Taylor that William admitted his involvement to Moore before trial; there is no assertion or explanation why Parchman was not negligent for not discovering Moore's evidence sooner.

¶41 In summary, Parchman was required to prove by clear and convincing evidence that the first four factors of his newly discovered evidence claim had been satisfied. *See* ***id.*** His postconviction motion failed to provide that proof or even argue how each factor was satisfied. The record conclusively

demonstrated that Parchman was not entitled to relief and, therefore, the trial court did not erroneously exercise its discretion when it denied Parchman's postconviction motion.

III. Whether the controversy was fully tried.

¶42 Parchman argues that "the trial court erred by denying a hearing on the claim the real controversy was not fully tried." (Capitalization omitted.) However, his postconviction motion did not explain what information needed further development at a hearing. He identified several facts that he believed justified a new trial: (1) the defense spoke with some of the jurors after trial and, according to trial counsel, the jurors said they "accepted our version of what all had happened in this case but were confused by all of the things of the aiding and abetting instructions"; (2) the jury did not believe that Parchman was the shooter; and (3) Parchman has obtained affidavits from individuals that allegedly impeach the credibility of Jones and White. These allegations, on their face, do not provide a basis for discretionary reversal.

¶43 Our supreme court "has exercised its power to reverse when the real controversy has not been fully tried in many different situations," but "it does so only in exceptional cases." ***State v. Bannister***, 2007 WI 86, ¶¶41, 42, 302 Wis. 2d 158, 734 N.W.2d 892. Parchman has not convinced us that the real controversy was not fully tried, or that a hearing on this issue is necessary.

¶44 First, Parchman's postconviction motion did not even attempt to explain how his attorney's statement concerning inadmissible evidence of the

jury's deliberations could constitute a basis for reversal in the interest of justice. *See* WIS. STAT. § 906.06(2).[11]

¶45 Second, the fact that the jury acquitted Parchman of possessing a firearm was not inconsistent with the evidence. As the trial court noted, the jury apparently "believed something other than the fact that Willie Parchman executed Larry Wallace on his own."

¶46 Third, Parchman's postconviction motion referenced affidavits that he claims affect the credibility of Jones and White. This single reference to the affidavits is insufficient to explain or support his claim that the extraordinary relief provided by discretionary reversal is warranted in this case. It is important to note that there were many witnesses in this case. Parchman's own statement, introduced through the detective, that Parchman and Young took Larry to Blount's house and that "[t]hat's when things got bad," supported the jury's verdict. The

[11] WISCONSIN STAT. § 906.06(2) provides in relevant part:

> **Competency of juror as witness.**
>
> ….
>
> **(2)** INQUIRY INTO VALIDITY OF VERDICT OR INDICTMENT. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon the juror's or any other juror's mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror's mental processes in connection therewith, except that a juror may testify on the question whether extraneous prejudicial information was improperly brought to the jury's attention or whether any outside influence was improperly brought to bear upon any juror. Nor may the juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying be received.

fact Parchman was arrested the night of the homicide after running from officers in the alley behind the home where Larry's body was transferred between cars was also compelling evidence that he was involved.

¶47 In summary, discretionary reversal is an extraordinary remedy. Parchman's postconviction motion did not allege sufficient facts to warrant a hearing or reversal. The trial court did not err when it denied Parchman's motion without a hearing.

IV. Ineffective assistance of counsel.

¶48 Parchman argues that the trial court erred when it did not hold a ***Machner***[12] hearing on Parchman's claims that his two trial attorneys were ineffective. A defendant claiming ineffective assistance of counsel must establish that: (1) the lawyer was deficient; and (2) the defendant was prejudiced as a result. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). If a reviewing court determines that a defendant has failed to satisfy either prong of the ***Strickland*** test, it need not consider the other one. ***Id.*** at 697.

¶49 Parchman argued his trial counsel were ineffective based on at least two deficiencies: (1) "[f]ailing to discover the precise parameters of the State's agreement with Monchello Louis"; and (2) "failing to present available exculpatory testimony from William Parchman." We conclude that Parchman failed to establish prejudice and, therefore, the trial court did not err when it denied Parchman's motion without a ***Machner*** hearing.

[12] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

¶50 Parchman contends that his trial counsel were ineffective because they did not know the full extent of Louis's plea agreement. He notes that one of his attorneys said at trial, "I was just handed a letter I didn't even know we had … it was in our file … I just found it, so if they want to proceed that is fine." However, Parchman does not explain what was undiscovered about the plea agreement and how it prejudicially affected his trial. Regardless of whether his trial counsel remembered the letter (which was likely the letter from the prosecutor outlining Louis's plea agreement), trial counsel effectively cross-examined Louis about his motivations for testifying. The jury ultimately heard from Louis that he knew his testimony could help his case. Thus, the jury knew that Louis had a motive to testify in a way that would please the State. Parchman has not identified any particular aspect of the plea agreement that was not revealed to the jury and he has not explained how he was prejudiced by the lack of additional information about Louis's plea agreement. He has failed to show prejudice from this alleged error.

¶51 Parchman also failed to explain how he was prejudiced by his trial counsels' failure "to present available exculpatory testimony from William Parchman." Specifically, Parchman argued in a single paragraph in his postconviction motion that his trial counsel should have introduced as evidence William's statement to the pretrial defense investigator in which William admitted his involvement and said that Parchman was not present for the shooting. However, Parchman's motion did not explain how the failure to admit that statement established the requisite prejudice addressed in ***Strickland***. *See* ***id.***, 466 U.S. at 694 ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have

been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

¶52 As noted, the investigator's report said that William admitted to the investigator that he was present for the shooting. William told the investigator that both he and Parchman met up with Larry, went with him to Blount's house and were present when Larry made calls concerning the necklace. William said Parchman left approximately thirty minutes after they arrived and was not present when Larry was shot. These statements, even if true, do not necessarily exonerate Parchman as a party to the crime. Rather, they place him in the house and present while Larry tried to find out who took Parchman's necklace. This evidence is contrary to the theory of defense that Parchman was not involved with events at the house and had instead, as defense counsel suggested in closing, simply dropped Larry off and left.

¶53 Parchman also does not attempt to explain how this evidence, if admitted at trial, would have negated his own inculpatory statements to detectives. For these reasons, we conclude that Parchman's postconviction motion did not allege sufficient facts to prove that meet the prejudice standard for ineffective assistance of counsel. *See* ***id.***

¶54 Because Parchman's postconviction motion failed to show that he was prejudiced by his trial counsels' alleged errors, we conclude that the trial court did not erroneously exercise its discretion when it denied Parchman's motion without a ***Machner*** hearing.

By the Court.—Judgment and orders affirmed.

Not recommended for publication in the official reports.