COURT OF APPEALS
DECISION
DATED AND FILED

April 6, 2010

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2009AP1450 **Cir. Ct. No. 2004CF6025**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DERRIEST LAMAR BOOSE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed.*

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

¶1 FINE, J. Derriest Lamar Boose appeals *pro se* from an order denying his WIS. STAT. § 974.06 motion. Boose claims the circuit court erred when it summarily denied his claim that his lawyer gave him ineffective

representation during his guilty plea, and that his appellate lawyer was ineffective for not raising this issue in his direct appeal. We affirm.

I.

¶2 In October of 2004, Boose was charged with first-degree reckless homicide while armed and burglary as party to a crime, which the prosecutor amended to first-degree intentional homicide on the day the trial was scheduled to start. Boose had given the police an inculpatory statement, which the circuit court ruled admissible. Also on the day the trial was scheduled to start, the prosecutor told Boose and his lawyer that Boose could still take an offered plea bargain but that he must decide before the trial started. Boose accepted the offer and pled guilty to second-degree reckless homicide while armed and burglary as party to a crime.

¶3 During the plea colloquy Boose told the circuit court that he signed the guilty plea questionnaire and waiver of rights form after going over it with his lawyer, that his lawyer explained the charges and the elements of the crimes, and that he understood all the constitutional rights he was giving up by pleading guilty. Boose's lawyer assured the circuit court that he explained the elements of the crimes to Boose: "I took the jury instructions back with me, and I went through the jury instructions with him with respect to those two offenses." The circuit court asked Boose if any threats or promises were made to get him to plead guilty. Boose answered "No." The circuit court also explained the potential penalties to Boose, and then asked:

> THE COURT: Did you have enough time to talk to [your lawyer] before you decided to plead guilty?
>
> THE DEFENDANT: Yes, I did.

> THE COURT: Any question you want to ask me about the decision you made to plead guilty?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: Are you satisfied with the way your attorney has represented you so far?
>
> THE DEFENDANT: Yes, sir.

¶4 After Boose's lawyer confirmed that he believed the plea was being made freely, voluntarily, and intelligently, the circuit court accepted the plea. The circuit court sentenced Boose and entered judgment. Boose's appellate lawyer filed a direct appeal, challenging only his sentence. We affirmed.

¶5 In April of 2009, Boose filed a *pro se* postconviction motion, which the circuit court summarized as "contending that appellate counsel was ineffective for failing to raise issues with respect to the entry of his guilty plea. He asserts that he was never told the elements of the offenses and that he was coerced into entering his plea." The circuit court denied his motion.

II.

¶6 Boose claims his trial lawyer never explained the elements of the offense, and failed to tell the circuit court about his "learning disability and psychological problems." Boose also contends that his trial lawyer should have objected to what he characterizes as the prosecutor's coercive plea-pressure tactic, which, according to Boose, was telling the defense that it had only a short time to decide whether to accept the plea bargain. He also faults his appellate lawyer for not raising this issue in his direct appeal. Boose argues that the circuit court erred in denying his claim without having a hearing under ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905, 908–909 (Ct. App. 1979) (normally, the trial court

must hold an evidentiary hearing to decide whether a trial lawyer gave his or her client constitutionally ineffective representation).[1] We disagree.

¶7 To be entitled to a ***Machner*** hearing, a defendant must show facts that, if true, would entitle him to the relief he seeks. *See* ***State v. Allen***, 2004 WI 106, ¶¶9–10, 274 Wis. 2d 568, 576–577, 682 N.W.2d 433, 437–438 (The trial court has the discretion to deny a postconviction motion for a ***Machner*** hearing "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."). Whether a motion was sufficient to require a hearing is a legal issue that we review *de novo*. ***State v. Bentley***, 201 Wis. 2d 303, 309–310, 548 N.W.2d 50, 53 (1996).

¶8 Here, the circuit court found that Boose's claims were contradicted by the Record and that his "affidavit is conclusory at best. Although he states that he didn't understand the elements, he fails to divulge what he did not understand about them. The motion is without specificity of fact … [and] his claim of coercion is not supported by the record." We agree.

¶9 As we have seen, during the plea colloquy Boose affirmed that his trial lawyer explained the elements of the crime to which he was pleading guilty, that he was not coerced into pleading guilty, and that he had no questions for the circuit court. Additionally, Boose signed and said that he understood a plea

[1] To establish ineffective assistance of counsel, a defendant must show: (1) deficient performance; and (2) prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove deficient performance, a defendant must point to specific acts or omissions by the lawyer that are "outside the wide range of professionally competent assistance." ***Id.***, 466 U.S. at 690. To prove prejudice, a defendant must demonstrate that the lawyer's errors were so serious that the defendant was deprived of a fair trial and a reliable outcome. ***Id.***, 466 U.S. at 687.

questionnaire and waiver of rights form. Boose tries to explain all this away by saying he was just "going along" at the plea hearing because "his head [was] spinning, [and] that his mind went blank and he just shut down because" of "the speed of the whole thing." There is no evidence in the Record, however, to support this contention, and, as the circuit court noted, he offers nothing but his conclusory assertions. Further, although Boose claims his lawyer was ineffective, Boose does not show what would have changed if his lawyer had done what Boose claims was not done. He has thus not satisfied his burden under ***Strickland***.

¶10 The circuit court carefully explained Boose's rights to him in a full and fair plea colloquy. As the circuit court determined, Boose has not shown a need for a ***Machner*** hearing.

By the Court.—Order affirmed.

Publication in the official reports is not recommended.