

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 17, 2010

A. John Voelker
Acting Clerk of Court of Appeals

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.

Appeal No. 2009AP1851-CR

Cir. Ct. No. 2007CF4409

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM DEMAJOR ROGERS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. William Demajor Rogers, Jr., appeals a judgment convicting him of first-degree reckless homicide while armed, felon in possession of a firearm, and hiding a corpse. He also appeals an order denying his motion to

withdraw his plea or, in the alternative, for a new sentencing hearing. Rogers argues that he received ineffective assistance of trial counsel. We affirm.

¶2 To prove a claim of ineffective assistance of counsel, a defendant must show that counsel's performance was deficient, and that the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is deficient when it is not "objectively reasonable." *State v. Koller*, 2001 WI App 253, ¶8, 248 Wis. 2d 259, 635 N.W.2d 838. Counsel's deficient performance prejudices the defense when there is "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, ¶9 (citation omitted). Stated differently, "[s]howing prejudice means showing that counsel's alleged errors actually had some adverse effect on the defense." *Id.*

¶3 A court need not address "both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697. "In particular, a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." *Id.* "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice ... that course should be followed." *Id.*

¶4 Rogers argues that his attorney was ineffective because he did not raise the issue of Rogers's competency until shortly before trial, and he had only one doctor evaluate Rogers, who concluded that Rogers's mental state at the time the crime was committed did not support a plea of not guilty by reason of mental disease or defect. Rogers contends that his attorney was allowed by WIS. STAT.

§ 971.16 (2007-08) to have up to three doctors evaluate him, and that his attorney should have ensured that additional evaluations were conducted.

¶5 Rogers’s claim of ineffective assistance of trial counsel fails because he has not shown that he was prejudiced by counsel’s allegedly deficient acts. Rogers does not allege that additional medical evaluations would have uncovered an expert whose opinion would have supported a plea of not guilty by reason of mental disease or defect. Rogers thus has not made the requisite showing that additional evaluations would have led to information that would have helped him. *See State v. Flynn*, 190 Wis. 2d 31, 48, 527 N.W.2d 343 (Ct. App. 1994) (An appellant “‘who alleges a failure to investigate on the part of his counsel must allege with specificity what the investigation would have revealed and how it would have altered the outcome.’”) (citation omitted.). Since Rogers has not shown that the result of the proceeding would have been different had his attorney sought additional medical evaluations of him, he has not shown that he was prejudiced. Therefore, we reject his claim of ineffective assistance of counsel.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2007-08).

