COURT OF APPEALS
DECISION
DATED AND FILED

May 7, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1576-CR **Cir. Ct. No. 2010CF1313**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMIE F. DEJESUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

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

¶1 PER CURIAM. Jamie F. Dejesus, *pro se*, appeals a judgment convicting him of one count of battery and one count of false imprisonment. He also appeals an order denying his motion for postconviction relief. Dejesus argues

that he should be allowed to withdraw his guilty plea and that his trial lawyers ineffectively represented him. We affirm.

¶2 The police arrested Dejesus for physically attacking his girlfriend, and barricading her into a room with him. The circuit court ordered that Dejesus have no contact with the victim, either directly or through others. After the order was entered, Dejesus made several telephone calls from jail in which he asked various people to contact the victim and persuade her not to testify against him. The prosecutor moved the circuit court to rescind Dejesus's phone, mail and visitation privileges because Dejesus had attempted to contact the victim. The circuit court rescinded Dejesus's privileges. The jail then placed Dejesus in segregation.

¶3 About five weeks later, Dejesus pled guilty to misdemeanor battery and felony false imprisonment. The circuit court sentenced him to nine months in jail for battery and five years of imprisonment for false imprisonment, with three years of initial confinement and two years of extended supervision, to be served consecutively. Dejesus was initially represented by the state public defender on appeal, but knowingly waived his right to counsel and moved for postconviction relief *pro se*. The circuit court denied the motion.

¶4 Dejesus first argues that he should be allowed to withdraw his guilty plea. "If a defendant moves to withdraw the plea after sentencing, the defendant 'carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a manifest injustice.'" ***State v. Thomas***, 2000 WI 13, ¶16, 232 Wis. 2d 714, 726, 605 N.W.2d 836, 842–843 (citation and internal quotation marks omitted). "The higher standard of proof is used after sentencing, because once the guilty plea is

finalized, the presumption of innocence no longer exists." ***Id.***, 2000 WI 13, ¶16, 232 Wis. 2d at 726, 605 N.W.2d at 843. "The 'manifest injustice' test requires a defendant to show 'a serious flaw in the fundamental integrity of the plea.'" ***Ibid.*** (citation omitted).

¶5 Dejesus contends that his plea was involuntarily entered because he was under extreme stress due to the fact that he had been placed in "maximum custody," which included segregation, when his privileges were restricted at the jail. The record belies this claim. During the plea colloquy, Dejesus informed the circuit court that it was his decision to plead guilty to the charges, that no one had made any promises or threats to induce him to plead guilty, and that he was pleading guilty after discussing the matter with his lawyer. The circuit court conducted an in-depth colloquy with Dejesus, but Dejesus did not in any way indicate that he was entering the plea under duress. Therefore, we reject Dejesus's argument that his plea was involuntarily entered due to the stress he experienced in segregation.

¶6 Dejesus next argues that his two trial lawyers ineffectively represented him. To prove a claim of ineffective assistance, a defendant must show that his lawyer's performance was deficient and that the deficient performance prejudiced him. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). "The proper measure of attorney performance remains simply reasonableness under prevailing professional norms." ***Id.*** at 688.

¶7 Dejesus first contends that his lawyers provided him ineffective assistance because they failed to show him photos that he believes were crucial to his defense. Dejesus does not explain in his brief what photos he believes he should have been shown. We will not address this issue because it is not

adequately briefed. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633, 642 (Ct. App. 1992).

¶8 Second, Dejesus argues that his trial lawyers inadequately represented him because they did not produce him for the hearing at which his phone, mail and visitation privileges were restricted. Dejesus points to no legal basis for his contention that his attorneys were required to produce him for the hearing. The statutes do not require that a prisoner be produced for a hearing on a motion to rescind jail privileges. *See* WIS. STAT. § 971.04. Dejesus's lawyers did not perform deficiently by failing to ensure that he was present at the hearing.

¶9 Third, Dejesus argues that his attorneys did not effectively represent him because they did not challenge the circuit court's order rescinding his phone and mail privileges. The circuit court restricted Dejesus's freedom in jail because he violated the restraining order by repeatedly attempting to contact the victim through others to ask her to recant. Dejesus does not argue that he did not, in fact, violate the restraining order. Moreover, Dejesus cannot argue that the circuit court erred in ordering that his privileges be curtailed based on the facts alleged by the prosecutor because the circuit court may rely on hearsay or on the declaration of the prosecutor in restricting a prisoner's privileges pursuant to WIS. STAT. § 940.47. Dejesus thus has no basis for challenging the circuit court's order restricting his privileges. A trial lawyer's failure to raise a meritless argument does not constitute deficient performance. *See* ***State v. Wheat***, 2002 WI App 153, ¶23, 256 Wis. 2d 270, 282, 647 N.W.2d 441, 447. We reject the argument that Dejesus received 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.