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DISTRICT I

March 10, 2026

To:

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Circuit Court Judge
Electronic Notice

Patricia A. FitzGerald
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Lisa E.F. Kumfer
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You are hereby notified that the Court has entered the following opinion and order:

2025AP232-CR

State of Wisconsin v. Donnell M. Allen (L.C. # 2018CF3937)

Before White, C.J., Donald, and Geenen, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Donnell M. Allen appeals from a judgment convicting him of two counts of first-degree intentional homicide with the use of a dangerous weapon as a party to a crime and one count of felony bail jumping. He also appeals from an order denying his motion for postconviction relief. Allen contends that his trial counsel was ineffective for failing to object to evidence of a lineup that took place after the paper CR-215 probable cause procedure but before Allen was appointed counsel. Based upon our review of the briefs and record, we conclude at conference that this case

is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).¹ We summarily affirm.

On June 10, 2019, an amended information charged Allen with two counts of first-degree intentional homicide with the use of a dangerous weapon as a party to a crime and one count of felony bail jumping. The charges stemmed from the shooting deaths of Antonio and Justin Singleton. The matter proceeded to a bench trial where the trial court found Allen guilty of all three charges. The court sentenced Allen to mandatory life imprisonment with the ability to petition for release to extended supervision after 45 years of initial confinement.

Following sentencing, Allen filed a postconviction motion for a new trial on the grounds that his trial counsel was ineffective for failing to object to the trial testimony of one witness, J.B., who selected Allen from a live lineup that occurred a day after a court commissioner found that police had probable cause for Allen's warrantless arrest. Allen argued that counsel's failure to object violated his Sixth Amendment right to counsel because the in-person lineup was conducted without the benefit of counsel. The postconviction court denied the motion without a hearing, stating that at the time of Allen's trial, the issue was unsettled as to whether the CR-215 probable cause procedure—an all-paper procedure—triggers the right to counsel. Following Allen's trial, this court issued its decision in *State v. Robinson*, 2024 WI App 50, 413 Wis. 2d 534, 12 N.W.3d 535, where we held that while the CR-215 probable cause procedure does trigger the right to counsel, the issue was not sufficiently settled at the time of Robinson's trial. *Id.*, ¶¶24, 35. We concluded that Robinson's counsel therefore could not have been ineffective for failing to move to exclude a lineup identification that occurred without the benefit of counsel. *Id.*, ¶35. The

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

postconviction court noted that Allen’s motion did not allege facts that significantly differed from those alleged in *Robinson* and denied his motion. This appeal follows.

On appeal, Allen contends that the postconviction court erroneously denied his motion without a hearing. He maintains that counsel was ineffective for failing to object to testimony which the State offered at trial that was based upon an in-person line up held after the CR-215 procedure but before the appointment of counsel. Allen contends that the law was sufficiently settled at the time of his trial based upon multiple federal court holdings.

To prove ineffective assistance of counsel, a defendant must show that his attorney performed deficiently and the deficient performance was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Our standard of review when a defendant argues that he received ineffective assistance of counsel “is a mixed question of fact and law.” *State v. Erickson*, 227 Wis. 2d 758, 768, 596 N.W.2d 749 (1999). “We will not disturb the [postconviction] court’s findings of fact unless they are clearly erroneous.” *Id.* Whether an attorney rendered constitutionally ineffective assistance under the *Strickland* standard is a question of law that we review independently. *Id.*

A defendant who alleges ineffective assistance of counsel is not automatically entitled to an evidentiary hearing on that claim. Instead, a court may deny the defendant’s motion without a hearing if the motion presents only conclusory allegations or if the record otherwise conclusively demonstrates that the defendant is not entitled to relief. *See State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. Whether a postconviction motion raised sufficient facts so as to require an evidentiary hearing is a question of law that we review independently. *Id.*

Here, Allen contends that because he was entitled to counsel once the CR-215 probable cause procedure was complete, trial evidence of J.B.'s lineup identification violated his Sixth Amendment right to counsel because the lineup was conducted before counsel was appointed. We disagree.

For completeness, we note that a probable cause determination must be made within 48 hours of a warrantless arrest to be timely. *See County of Riverside v. McLaughlin*, 500 U.S. 44, 56 (1991). In Milwaukee County, in order to comply with *Riverside*'s 48-hour rule, a court commissioner or judge reviews a sworn affidavit from law enforcement to determine if probable cause for the arrest exists and to set initial bail. *Robinson*, 413 Wis. 2d 534, ¶19. "This procedure is accomplished by an all-paper review and the completion of the CR-215 form, which identifies the source of the probable cause statement, the date and time of the warrantless arrest, the probable offense, the initial bail, and the date and time the form was completed by a judicial officer." *Id.* In *Robinson*, we concluded that "the Sixth Amendment right to counsel attaches during the CR-215 process, thus necessitating a right to counsel for any later 'critical stages' of prosecution." *Id.*, ¶23 (citation omitted).

We conclude that trial counsel's performance was not deficient because at the time of Allen's trial, the law in this area was unsettled and counsel could not have been ineffective for failing to object to an unsettled issue. "When the law is unsettled, the failure to raise an issue is objectively reasonable and therefore not deficient performance." *State v. Jackson*, 2011 WI App 63, ¶10, 333 Wis. 2d 665, 799 N.W.2d 461; *see State v. Hanson*, 2019 WI 63, ¶29, 387 Wis. 2d 233, 928 N.W.2d 607. Wisconsin law provides that "ineffective assistance of counsel cases should be limited to situations where the law or duty is clear such that reasonable counsel should know

enough to raise the issue.” *State v. Maloney*, 2005 WI 74, ¶29, 281 Wis. 2d 595, 698 N.W.2d 583 (citation omitted).

Allen’s trial took place in October 2019. At that time, “there [had] been federal cases that [had] concluded that Milwaukee County’s CR-215 process triggered the attachment of the right to counsel[.]” *Robinson*, 413 Wis. 2d 534, ¶32. However, “the issue [had] been contested.” *Id.* *Robinson* thoroughly discusses the different interpretations of the relevant Wisconsin and federal case law at the time of Allen’s trial. *Id.*, ¶¶30-35. We concluded that the different interpretations rendered the relevant issue unclear and Robinson’s counsel could not have been ineffective for failing to move to suppress the lineup evidence. *Id.*, ¶35. Similarly, we cannot conclude that Allen’s counsel was ineffective for failing to object to the relevant lineup testimony. As the postconviction court noted, Allen’s postconviction motion does not significantly differ from the motion underlying the *Robinson* case. We affirm the judgment of conviction and the order denying Allen’s motion for postconviction relief.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals