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DISTRICT IV

April 23, 2026

To:

Hon. Mario White
Circuit Court Judge
Electronic Notice

Brent Simerson
Electronic Notice

Jeff Okazaki
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

John W. Kellis
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP564-CR

State v. Ted J. Bruno (L.C. # 2017CF2769)

Before Blanchard, Nashold, and Taylor, 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).

Ted Bruno appeals an order of commitment and an order denying his motion for postdisposition relief. 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

During a bifurcated trial, a jury found Bruno guilty of first-degree intentional homicide, but during the trial's responsibility phase, the jury found him not guilty by reason of mental disease or defect. Bruno was ordered committed to the Wisconsin Department of Health

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

Services. Bruno filed a postdisposition motion alleging that his trial counsel was ineffective by not moving to dismiss without prejudice the first-degree intentional homicide charge early in the case, when Bruno did not receive a timely preliminary examination. *See* WIS. STAT. § 970.03(2). The circuit court denied the motion.

Bruno maintains his ineffective assistance argument on appeal. To establish ineffective assistance of counsel, a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both components of the analysis if a defendant makes an inadequate showing on one. *Id.* at 697. To demonstrate prejudice, 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. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* We affirm the circuit court's findings of fact unless they are clearly erroneous, but the determination of deficient performance and prejudice are questions of law that we review without deference to the circuit court. *State v. Pitsch*, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985).

For purposes of this appeal, we assume without deciding that the performance of Bruno's trial counsel was deficient in not moving to dismiss the case without prejudice when Bruno's preliminary hearing was delayed, and that such a motion, if brought, would have been granted. Instead, our analysis focuses on whether Bruno was prejudiced as a result of trial counsel not moving to dismiss the case without prejudice.

Bruno argues that he suffered prejudice because dismissal without prejudice would have been a decision in his favor that would have put him in a better legal position than he was in

while the case was pending. It is true that dismissal without prejudice would be an improvement in a defendant's position.

The State responds that any such improvement would have been temporary, because the State would have refiled the case. Bruno does not dispute that we may properly consider whether the State would have refiled the case. Instead, Bruno suggests possible reasons that the State might have chosen not to refile the case. He also posits various ways in which any new case might have proceeded differently from the case that actually occurred, in ways that would have been to his benefit. While at least some of Bruno's suggested alternative paths are plausible, none of them rise to the level of undermining our confidence that the eventual outcome of a hypothetical new case would have been the same as the actual case. Therefore, we conclude that Bruno's postdisposition motion was properly denied because Bruno failed to establish prejudice.

IT IS ORDERED that the orders appealed from are summarily affirmed under 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