COURT OF APPEALS
DECISION
DATED AND FILED

January 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-3017-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BOBBY RECCO JONES,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Wood County: JAMES M. MASON, Judge. *Affirmed.*

Before Dykman, P.J., Roggensack and Deininger, JJ.

PER CURIAM. Bobby Recco Jones appeals from judgments of conviction for several misdemeanors and felonies and from an order denying his

postconviction motion.[1] The issue is whether his trial counsel was ineffective by failing to move to suppress evidence. We affirm.

Jones was charged with several felonies and misdemeanors. He pleaded guilty to some of them, including charges of carrying a concealed weapon and retail theft. Jones's motion for postconviction relief on numerous grounds was denied. On appeal, Jones argues that he should be allowed to withdraw his pleas to the weapon and theft charges because his trial counsel was ineffective by not moving to suppress evidence recovered in a search.

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 the 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 trial 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 trial court. ***State v. Pitsch***, 124 Wis.2d 628, 634, 369 N.W.2d 711, 714-15 (1985).

[1] The crimes were charged in separately numbered criminal complaints. Jones's notice of appeal is captioned for only one of those cases, No. 95-CF-48. However, the relief Jones seeks in this appeal is withdrawal of his pleas to two misdemeanor counts, neither of which was charged in No. 95-CF-48. Therefore, we construe the notice of appeal as being from all the circuit court case numbers necessary to bring these issues before us. Ordinarily, an appeal from misdemeanor convictions would be decided by one judge of this court. *See* § 752.31(2)(f), STATS. However, because Jones has included the felony case number in his notice of appeal, even though no issues related to that conviction are raised, we will decide this case by a three-judge panel.

Jones's brief does not expressly discuss either the deficient performance or prejudice element of this analysis. Instead, it focuses on arguing how the suppression motion would have been successful had it been made. The argument is based entirely on the description of the search which is found in a police report. The officer himself does not appear to have testified at the postconviction hearing.

The substance of the report was that Officer Wayne Thom and another officer were following a car which "had a number of gang members in it," although the report does not state the basis for describing the occupants in this fashion. The car stopped at a residence, and the occupants went inside. One of the occupants was apparently sought by police in connection with a theft. The officers went to the residence to look for that person. They were granted entry to the residence and given permission to search, and they separated to look for their suspect. Officer Thom opened a door to one room and saw the person they were looking for. The report continued: "At that time to my back left, stepping out of the corner was [Jones]. He was immediately put up against the wall and patted down and a knife was retrieved from his left front pocket."

An officer may pat down a person for weapons if the officer has a reasonable suspicion that the person is armed. *See* ***State v. Guy***, 172 Wis.2d 86, 95, 492 N.W.2d 311, 314 (1992). The standard is less than probable cause, but more than a hunch. ***Id.*** Based on the record before us, Jones has failed to show that a suppression motion would have been successful. The report shows that during a search for a suspect believed to be a member of a gang, an officer was approached, partly from behind, by a person who was in the same room with the suspect. These are circumstances that would give an officer reasonable suspicion.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.