

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 25, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

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**Appeal No. 2025AP963-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2019CF3951

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOVANY JERONIMO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: STEPHANIE ROTHSTEIN and LAURA CRIVELLO, Judges.
Affirmed.

Before Donald, C.J., Colón, P.J., and Geenen, J.

Per curiam opinions 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).

¶1 PER CURIAM. Jovany Jeronimo appeals from his judgment of conviction and two court orders denying his postconviction motion for sentence modification and for a new trial. Jeronimo was charged with felony murder as a party to a crime for participating in an armed robbery with two co-actors, Ernesto Garcia and Fabian Herrera, that resulted in the death of Natanael Zapata-Santiago. Jeronimo was tried by a jury, found guilty, and sentenced to eighteen years of initial confinement followed by eight years of extended supervision.

¶2 On appeal, Jeronimo argues that the circuit court erred in denying his motion for sentencing relief because Garcia, who according to Jeronimo actually shot and killed Zapata-Santiago, received a lesser sentence for the same crime. Additionally, Jeronimo argues that his trial counsel was ineffective for not moving to suppress identification evidence taken from a police lineup that he argues was impermissibly suggestive.

¶3 We reject Jeronimo's arguments and conclude: (1) the circuit court did not erroneously exercise its discretion when it denied Jeronimo's motion for sentencing relief; and (2) Jeronimo did not make sufficient nonconclusory allegations that the lineup was impermissibly suggestive. Accordingly, we affirm.

BACKGROUND

¶4 Jeronimo was arrested on a charge of felony murder as a party to a crime in connection with an armed robbery. On August 30, 2019, Jeronimo, Garcia, and Herrera went to a house to purchase drugs from Mercedes and Octavio;¹ the victim, Zapata-Santiago, was also present. After Octavio finished weighing

¹ We use the pseudonyms set forth in Jeronimo's appellate briefs to refer to the living victims in this case.

marijuana, Garcia and Jeronimo pulled out handguns and pointed them at Octavio, Mercedes, and Zapata-Santiago. Herrera then grabbed the marijuana, and with Garcia and Jeronimo, fled out the back door. As the men were fleeing, one of them fired a gun into the living room. Zapata-Santiago was struck by the bullet and was pronounced dead at the scene.

¶5 On September 1, 2019, police arrested Herrera. Herrera told the police that a person named “Jo Jo” was involved in the shooting, and provided the police with Jo Jo’s address. After further investigation, the police believed that Herrera was referring to Jeronimo. The police presented Herrera with a photo array, and he identified Jeronimo’s photo as Jo Jo. The police then arrested Jeronimo in connection with the shooting.

¶6 On September 3, 2019, the police conducted a live lineup for Mercedes and Octavio to identify Jeronimo. Before conducting the lineup, a detective selected four individuals who generally matched Jeronimo’s description to act as “fillers” who, in addition to Jeronimo, would be shown to Mercedes and Octavio, one at a time, in the live lineup. Jeronimo chose to be the third person shown in the lineup. The witnesses were given instructions before being shown the lineup, including specific instructions to “[k]eep in mind that things like hairstyles, beards, and mustaches can easily be changed,” that they “should not feel [they] have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator,” and that “[t]he person who committed the crime may or may not be included[.]” Both Mercedes and Octavio identified the third person they viewed as being involved in the shooting. In interviews conducted after the lineup, both Mercedes and Octavio told detectives that they were “positive” or “certain” of their identifications.

¶7 The State charged Jeronimo, Garcia, and Herrera with felony murder as a party to a crime. Jeronimo pleaded not guilty and proceeded to trial, Garcia entered a no-contest plea, and Herrera accepted a plea deal in which he agreed to testify against his co-actors in exchange for his guilty plea. During Jeronimo’s trial, both Mercedes and Octavio testified about the events of the robbery and their lineup identification of Jeronimo, and each identified Jeronimo in the courtroom as one of the men who held a gun during the robbery. Herrera also testified that Jeronimo participated in the robbery and identified him in the courtroom.

¶8 The jury convicted Jeronimo of felony murder as a party to a crime. At his sentencing hearing, the State recommended that Jeronimo receive the same sentence as Garcia, who had been convicted of the same offense and was sentenced to twenty-three years of imprisonment, bifurcated into fifteen years of initial confinement and eight years of extended supervision. The circuit court ultimately sentenced Jeronimo to twenty-six years of imprisonment, bifurcated into eighteen years of initial confinement and eight years of extended supervision.

¶9 At sentencing, the circuit court did not identify any specific factor explaining why it sentenced Jeronimo to three more years of initial confinement than Garcia. It did however emphasize Jeronimo’s complacency in the robbery, that the robbery was premeditated, and discussed the heavy impact of homicides on the community. The court also noted Jeronimo’s character as it had observed during the trial, his statement that he lost a sibling to gun violence, the anti-social “adult” lifestyle he was living at only seventeen years old, and his numerous arrests as a juvenile. The court focused on what sentence would be appropriate for Jeronimo in order to deter him from recidivating and to deter others from committing similar offenses, while also considering Jeronimo’s rehabilitative and educational needs, and protecting the community.

¶10 Jeronimo then filed a postconviction motion raising several claims. He first requested sentence modification on grounds that the circuit court erroneously exercised its discretion in imposing a longer sentence on him than it had imposed on Garcia. He also requested a new trial on grounds that his trial counsel was ineffective for not moving to suppress the evidence of the lineup identification. He argued that the lineup was constitutionally defective because it was impermissibly suggestive in violation of his due process rights, and because he was not afforded counsel during the lineup in violation of his Sixth Amendment rights. The matter was held in abeyance pending resolution of the appeal in *State v. Robinson*, 2024 WI App 50, 413 Wis. 2d 534, 12 N.W.3d 535.

¶11 After we decided *Robinson*, the circuit court denied both of Jeronimo's ineffective assistance of counsel claims without an evidentiary hearing. The court concluded that Jeronimo's Sixth Amendment argument was governed by our holding in *Robinson*, and as in *Robinson*, Jeronimo's trial counsel did not perform deficiently by failing to litigate an unsettled proposition of law.² The circuit court also rejected Jeronimo's due process argument because he only provided conclusory allegations that the lineup was impermissibly suggestive and because the record conclusively demonstrated that Jeronimo was not prejudiced by the lineup. In a separate order, the court also denied Jeronimo's sentence modification request, determining that his sentence was not unduly harsh or unconscionable.

² In *Robinson*, we held that the Sixth Amendment right to counsel attached during Milwaukee County's CR-215 process and access to counsel was required at future critical stages of the prosecution, including identification lineups. *State v. Robinson*, 2024 WI App 50, 413 Wis. 2d 534, ¶¶23-24, 12 N.W.3d 535. However, we also concluded that Robinson's trial counsel was not ineffective for failing to move to exclude the lineup identification evidence because whether the Sixth Amendment applied to Milwaukee County's CR-215 process was an unsettled proposition of law. *Id.*, ¶¶32-35.

¶12 Jeronimo appeals.

DISCUSSION

I. **The circuit court did not erroneously exercise its discretion in denying Jeronimo’s postconviction motion for sentence modification.**

¶13 Jeronimo argues that the circuit court erred in denying his postconviction motion for sentence modification. He asserts that the disparity between his sentence and the lesser sentence imposed on Garcia is inequitable to the point of being harsh and unconscionable because Garcia “actually shot the victim.”

¶14 We begin with a brief recitation of a circuit court’s authority related to sentencing and sentence modification. “Within certain constraints, Wisconsin circuit courts have inherent authority to modify criminal sentences.” *State v. Harbor*, 2011 WI 28, ¶35, 333 Wis. 2d 53, 797 N.W.2d 828. A circuit court may not modify a sentence based on “reflection and second thoughts alone,” but it may do so if it determines that the sentence is “unduly harsh or unconscionable[.]” *Id.*, ¶¶35, 36 n.8. A sentence is unduly harsh or unconscionable if it is “so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.” *State v. Grindemann*, 2002 WI App 106, ¶31, 255 Wis. 2d 632, 648 N.W.2d 507 (citation omitted). “A sentence well within the limits of the maximum sentence is unlikely to be unduly harsh or unconscionable.” *State v. Scaccio*, 2000 WI App 265, ¶18, 240 Wis. 2d 95, 622 N.W.2d 449. A discretionary ruling of the circuit court will not be set aside if “it appears from the record that the court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach.” *Grindemann*, 255 Wis. 2d 632, ¶30.

¶15 Jeronimo directs our attention to *State v. Ralph*, 156 Wis. 2d 433, 456 N.W.2d 657 (Ct. App. 1990). In that case, Ralph pleaded guilty to one count of possessing marijuana with intent to deliver and one count of delivering marijuana, and the circuit court sentenced him to two consecutive terms of twenty-four months' imprisonment. *Id.* at 435. After Ralph was sentenced, one of his accomplices pleaded guilty to one count of delivering marijuana, and was sentenced by a separate court to eighteen months' imprisonment. *Id.* The court granted Ralph's request for sentence modification, explaining that it would have wanted Ralph to receive the same sentences on the marijuana delivery conviction as his similarly situated accomplice. *Id.* at 435-36. On appeal, we interpreted the circuit court's decision as implicitly determining that Ralph's original sentence was unduly harsh. *Id.* at 438-39. We concluded that the circuit court did not erroneously exercise its discretion because it provided sufficient reasons for its decision and because its factual finding that Ralph was similarly situated to his accomplice was not clearly erroneous. *Id.*

¶16 Jeronimo argues that under *Ralph*, a circuit court erroneously exercises its discretion if a defendant receives a greater sentence than a similarly situated co-actor. This argument misinterprets our holding in *Ralph*. Contrary to Jeronimo's suggestion, *Ralph* does not mean that a sentencing court *must* equalize a defendant's sentence with the sentence of a similarly situated accomplice. *Ralph* merely stands for the proposition that the circuit court has discretion to determine whether a sentence is unduly harsh and unconscionable, and a defendant receiving a harsher sentence than a similarly situated accomplice may support such a determination. Put another way, the circuit court is empowered to adjust a defendant's sentence based on a similarly situated co-actor's sentence, but it is not required to do so. To interpret *Ralph* otherwise would contradict the principle that sentences must be tailored to the individual defendant. See *State v. Gallion*, 2004

WI 42, ¶48, 270 Wis. 2d 535, 678 N.W.2d 197 (“Individualized sentencing ... has long been a cornerstone to Wisconsin’s criminal justice jurisprudence.”); **State v. Lechner**, 217 Wis. 2d 392, 427, 576 N.W.2d 912 (1998) (“No two convicted felons stand before the sentencing court on identical footing and no two cases will present identical factors.” (citation modified)). Whereas the court in **Ralph** determined that the defendant deserved an equal sentence to his accomplice, the circuit court in this case determined that Jeronimo should receive a longer sentence than Garcia.

¶17 The circuit court properly considered the relevant factors and circumstances when imposing Jeronimo’s sentence. In particular, it emphasized Jeronimo’s willingness to participate in the robbery, the “overwhelming” evidence that the robbery was premeditated, the heavy impact of Jeronimo’s actions on the victims, their families, and the community, the need to deter future gun violence, its observations of Jeronimo’s character and his anti-social “adult” lifestyle at only seventeen years old, his “numerous arrests” as a juvenile, and his rehabilitative needs. The circuit court also repeatedly questioned Jeronimo’s decision to bring a gun to a drug sale after he mentioned in his allocution that he had lost his own brother to gun violence. Further, Jeronimo’s sentence of twenty-six years’ imprisonment was well within the maximum possible sentence of fifty-five years’ imprisonment. See WIS. STAT. §§ 939.50(3)(c), 940.03, 943.32(2) (2023-24).³ In sum, “it appears from the record that the [circuit] court applied the proper legal standards to the facts before it, and through a process of reasoning, reached a result which a reasonable judge could reach,” namely, that Jeronimo’s sentence was

³ All references to the Wisconsin Statutes are to the 2023-24 version. Although Jeronimo was sentenced in 2021, the 2021-22 version of the relevant sentencing statutes do not differ from the 2023-24 version in place when Jeronimo’s postconviction motion was decided.

tailored to his circumstances and was not unduly harsh or unconscionable. See *Grindemann*, 255 Wis. 2d 632, ¶¶30-32.

¶18 During the hearing on Jeronimo’s postconviction motion, the circuit court explained that it was “clearly aware of Mr. Garcia’s sentence,” but exercised its discretion to impose a different sentence for Jeronimo based on its observations of Jeronimo’s trial. The court also noted that Jeronimo’s sentence was well within the statutory maximum. Given these considerations, the court also properly exercised its discretion in determining that Jeronimo’s sentence was not unduly harsh or unconscionable.

¶19 Jeronimo argues that the circuit court “invented speculative and post-hoc justifications for the disparity” between his sentence and Garcia’s sentence. In denying Jeronimo’s postconviction motion, the court considered the sentencing transcript and the relevant legal standards, including that “[d]efendants aren’t identical,” that sentences depend on the defendant’s “background” and “involvement,” and that circuit courts have wide discretion to determine the appropriate sentence.

¶20 When read in context, the circuit court’s ruling did not invent speculative reasons for the difference between Jeronimo’s and Garcia’s sentences. Rather, it explained how the sentencing transcript showed that Jeronimo received an individualized sentence based on his background, character, rehabilitative needs, the court’s observations at trial, and the danger Jeronimo posed to the community.

¶21 Jeronimo also suggests that the circuit court’s decision was “inequitable,” “unjust,” and “unfair” because he received a longer sentence than Garcia, even though there was evidence at trial indicating that Garcia fired the lethal shot. Although there was some evidence at trial indicating that Garcia fired the

bullet that killed Zapata-Santiago, it was not conclusively established who actually killed Zapata-Santiago. The court found that, while Garcia “probably” fired the lethal shot, it was not “definitive.” Although the circuit court could have placed greater weight on the evidence suggesting that Garcia fired the lethal shot, it was not required to do so, especially when that fact was not definitively established at trial.

¶22 The circuit court saw and heard the live trial testimony and evidence, and it had the discretion to determine the appropriate weight to be given to the evidence that Garcia may have fired the lethal shot. See *State v. Stenzel*, 2004 WI App 181, ¶16, 276 Wis. 2d 224, 688 N.W.2d 20. Further, as the court noted, in trials with multiple co-actors, it is not always the person that pulls the trigger who receives the longest sentence. The sentencing transcript reflects that the circuit court viewed the other factors that it discussed at length as more important in calculating Jeronimo’s sentence than the possibility that he did not fire the bullet that killed Zapata-Santiago.

¶23 Accordingly, we affirm the order denying Jeronimo’s postconviction motion for sentence modification.

II. The circuit court properly denied Jeronimo’s motion for a new trial without a *Machner* hearing because Jeronimo failed to make sufficient nonconclusory allegations that his counsel was ineffective.

¶24 Having concluded that the circuit court properly denied Jeronimo’s postconviction motion for sentence modification, we now turn to Jeronimo’s ineffective assistance claims. Jeronimo argues that the court erred in not granting him a *Machner*⁴ hearing because the lineup procedure was impermissibly

⁴ *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

suggestive. Specifically, he argues that the fillers were “grossly dissimilar in appearance” to him.

¶25 When a court denies a postconviction motion without a *Machner* hearing, we evaluate two issues de novo. “First, we assess whether the motion on its face alleges sufficient material and non-conclusory facts that, if true, would entitle the defendant to relief.” *State v. Jackson*, 2023 WI 3, ¶8, 405 Wis. 2d 458, 983 N.W.2d 608. “Second, we determine whether the record conclusively demonstrates that the defendant is not entitled to relief.” *Id.* A defendant is entitled to a *Machner* hearing if their postconviction motion “alleges sufficient and non-conclusory facts which would entitle the defendant to relief and the record does not conclusively establish otherwise[.]” *Id.* However, “[i]f the motion does not raise facts sufficient to entitle the defendant to relief, or if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing.” *State v. Ruffin*, 2022 WI 34, ¶28, 401 Wis. 2d 619, 974 N.W.2d 432.

¶26 Here, Jeronimo alleged that trial counsel should have moved to exclude evidence of Mercedes’s and Octavio’s lineup identifications because the lineup was impermissibly suggestive. Admission of evidence does not ordinarily implicate a defendant’s right to due process, except in circumstances where the evidence “is so extremely unfair that its admission violates fundamental conceptions of justice[.]” *Perry v. New Hampshire*, 565 U.S. 228, 237 (2012) (citation omitted). To determine whether an eyewitness identification violates the defendant’s right to due process, the defendant first has the burden of proving that “the identification procedure employed by law enforcement was impermissibly suggestive such that there was a very substantial likelihood of misidentification.” *State v. Roberson*, 2019 WI 102, ¶34, 389 Wis. 2d 190, 935 N.W.2d 813. An identification procedure

may be impermissibly suggestive if the target either appears “unique in a manner directly related to an important identification factor” or has a characteristic that is “particularly striking or pronounced” compared to the other participants. **Powell v. State**, 86 Wis. 2d 51, 67, 271 N.W.2d 610 (1978). Mere variations in appearance are insufficient to warrant suppression of an identification. **Wright v. State**, 46 Wis. 2d 75, 86, 175 N.W.2d 646 (1970).

¶27 In his postconviction motion, Jeronimo alleged that the lineup was impermissibly suggestive because the five lineup participants “look nothing alike.” Jeronimo alleged that the lineup participants appeared to be from different races and had different hairstyles, facial hair, and body types. According to Jeronimo, he “clearly [stood] out due to his dark skin, very dark hair, lack of tattoos and lack of facial hair.”

¶28 These allegations, without more, are not sufficient to show that the lineup was impermissibly suggestive. Jeronimo did not adequately explain *how* the difference in the physical appearance of the lineup participants would have improperly drawn attention to him. As the circuit court concluded in its order denying Jeronimo’s motion, none of the alleged variations in appearance “singled the defendant out as the perpetrator” or “pointed to him specifically.” It was not enough for Jeronimo to allege that his appearance differed in some way from the other lineup participants. Rather, he needed to allege that those variations somehow suggested to the witnesses that they should select him as the perpetrator. Without an explanation as to how those variations suggested him to the witnesses, Jeronimo’s allegations that he stood out are conclusory.

¶29 Jeronimo also relies on a portion of **Perry v. New Hampshire** in which the United States Supreme Court wrote that a lineup may be impermissibly

suggestive if “the other participants in the lineup were grossly dissimilar in appearance to the suspect.” *Id.*, 565 U.S. at 243 (citation modified). However, here, the other four participants in the lineup were not “grossly dissimilar” in appearance to Jeronimo.

¶30 As the circuit court correctly observed, there were “some observable variations in hair length, height, build, facial hair, and complexion” between the participants, but they were all “young males of similar age, stature, and [wearing] nearly identical jail clothing. None of these variations singled the defendant out as the perpetrator.” At the lineup, Mercedes and Octavio were made aware that facial hair and hairstyles change often, and therefore they should not base their identifications off of those features. As for the arm tattoos on some of the fillers (Jeronimo has none), Octavio described Jeronimo immediately after the incident as “wearing a gray hoody with wavy pattern and hood over hea[d], black pants, and armed with a black semiautomatic handgun.”⁵ Neither witness would have been able to see Jeronimo’s arms during the robbery, so the arm tattoos present on some of the fillers would be irrelevant to the witnesses’ identifications. This is not a situation in which the other participants bore such little resemblance to Jeronimo that the lineup improperly drew the witnesses’ attention to him.

¶31 Accordingly, because Jeronimo’s motion failed to allege sufficient nonconclusory facts to show that the lineup was impermissibly suggestive, he was not entitled to a *Machner* hearing, and the circuit court had the authority to deny his motion without holding one.

⁵ Mercedes did not provide a description of Jeronimo.

¶32 Before concluding, we address one last argument from Jeronimo. Jeronimo argues that trial counsel was ineffective for failing to move to exclude Mercedes’s and Octavio’s lineup identification evidence based on a violation of his Sixth Amendment rights. However, as the circuit court correctly held, our decision in **Robinson** governs this issue. Like the lineup in **Robinson**, the lineup in this case took place after a CR-215 probable cause hearing at which Jeronimo’s Sixth Amendment right to counsel attached. *Id.*, 413 Wis. 2d 534, ¶¶23-24. Like the defendant in **Robinson**, Jeronimo was denied his Sixth Amendment right to counsel during the subsequent lineup because the lineup was a “critical stage” of the prosecution necessitating the right to counsel. *Id.* However, like trial counsel in **Robinson**, trial counsel in this case did not perform deficiently for failing to raise this issue in a motion.

¶33 Jeronimo’s trial was held between April 13 and April 15, 2021, but we did not decide **Robinson** until August 6, 2024. Therefore, at the time of Jeronimo’s trial, it was unsettled whether the Sixth Amendment right to counsel attached at the CR-215 probable cause hearing, necessitating the right to counsel and subsequent “critical stages” of the prosecution (e.g., a lineup). *Id.*, ¶¶32-35. Trial counsel does not perform deficiently for failing to raise an unsettled proposition of law. **State v. Maloney**, 2005 WI 74, ¶23, 281 Wis. 2d 595, 698 N.W.2d 583.

CONCLUSION

¶34 For the foregoing reasons, we conclude that the circuit court did not erroneously exercise its discretion in denying Jeronimo’s motion for sentence modification. We further conclude that Jeronimo was not entitled to a **Machner**

hearing, and the circuit court did not erroneously exercise its discretion by denying Jeronimo's motion without holding one.

By the Court.—Judgment and orders affirmed.

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

