

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2024AP946-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2019CF1749

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARIUS T. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JANET C. PROTASIEWICZ and ELLEN R. BROSTROM, 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. Darius T. Robinson, pro se, appeals a judgment following a jury trial and an order denying his motion for postconviction relief without an evidentiary hearing.¹ Robinson raises numerous claims on appeal, including that he was illegally detained and trial counsel was ineffective. As discussed below, we reject Robinson’s arguments and affirm.

BACKGROUND

¶2 Robinson was initially charged with: (1) first-degree sexual assault of Josephine using a gun; (2) first-degree sexual assault of Kim using a gun; (3) first-degree sexual assault of Candace using a gun; and (4) attempted second-degree sexual assault of Candace.² Robinson met all three women through an online escort service.

¶3 Robinson proceeded to a jury trial in November 2019. Prior to the trial, three counts of armed robbery were added. In support of the armed robbery charges, the State alleged that Robinson had forcibly taken each woman’s cell phone at the time of the sexual assault.

¶4 During the trial, the State produced multiple witnesses, including Josephine, Kim, and Candace. Robinson chose to testify on his behalf. Robinson admitted to setting up appointments with all three women online in order to pay

¹ The Honorable Janet C. Protasiewicz presided over Robinson’s jury trial. The Honorable Ellen R. Brostrom presided over the postconviction proceedings. We refer to Judge Protasiewicz as the trial court and Judge Brostrom as the postconviction court.

² To protect the victims’ identity and for ease of reading, we adopt the pseudonyms used in the State’s brief. WIS. STAT. § 809.86(4) (2023-24).

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

them for sex. He alleged, however, that he had consensual sex with all three women and then refused to pay as agreed. Robinson denied forcibly taking the women's cell phones.

¶5 The jury rejected Robinson's version of events and found Robinson guilty of the seven counts as charged. In February 2020, he received a total sentence of 190 years broken down into 125 years of initial confinement and 65 years of extended supervision.

¶6 In postconviction proceedings, Robinson opted to represent himself. Robinson filed a fifty-eight-page postconviction motion. As best as we can discern, Robinson argued that he was illegally detained for more than forty-eight hours without a probable cause determination pursuant to *County of Riverside v. McLaughlin*, 500 U.S. 44 (1991), that a live lineup he participated in was impermissibly suggestive, and that he was deprived of his right to counsel during the live lineup procedure. Robinson also argued that counsel was ineffective for failing to object to the *Riverside* violation, character evidence, "tainted" exhibits, inaccurate information, and "critical various issues." Robinson further alleged that trial counsel was ineffective for failing to "obtain mitigation."³

¶7 After briefing, the postconviction court denied Robinson's motion without a hearing. The court found that there was no *Riverside* violation, Robinson was not deprived of effective assistance of counsel, he did not establish sufficient grounds for a new trial, and he did not meet his burden to show that the

³ In addition, Robinson argued that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), and trial counsel was ineffective for failing to impeach one of the witnesses for perjury. In his reply brief to this court, Robinson explicitly withdraws these claims. Accordingly, we do not address these claims further.

lineup was impermissibly suggestive. Robinson filed a motion for reconsideration, which the postconviction court denied.⁴

¶8 Robinson now appeals the judgment of conviction and the order denying his postconviction motion. Additional relevant facts are addressed below.

DISCUSSION

¶9 On appeal, Robinson renews many of the claims set forth in his postconviction motion. Because Robinson did not raise these claims during his trial proceedings, these claims are forfeited. *State v. Ndina*, 2009 WI 21, ¶30, 315 Wis. 2d 653, 761 N.W.2d 612. Accordingly, we review Robinson’s claims under the rubric of ineffective assistance of counsel.⁵ *State v. Carprue*, 2004 WI 111, ¶47, 274 Wis. 2d 656, 683 N.W.2d 31.

¶10 To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel’s performance was deficient and that the defendant suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). We need not address both prongs of the test if the defendant does not make a sufficient showing on one of the prongs. *Id.* at 697.

⁴ Robinson does not appeal from the order denying the motion for reconsideration, so we do not discuss it further. *A.O. Smith Corp. v. Allstate Ins. Co.*, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998).

⁵ In his reply brief, Robinson contends that his *Riverside* claim and his right to counsel claim are not forfeited. Robinson’s argument, however, lacks citation to relevant legal authority establishing that such claims are preserved when raised for the first time on appeal. We do not address undeveloped arguments. *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

¶11 When deciding whether a defendant is entitled to an evidentiary hearing on a claim of ineffective assistance of counsel, we first independently determine “whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Ruffin*, 2022 WI 34, ¶27, 401 Wis. 2d 619, 974 N.W.2d 432. “Whether the record conclusively demonstrates that the defendant is entitled to no relief is also a question of law we review independently.” *State v. Spencer*, 2022 WI 56, ¶23, 403 Wis. 2d 86, 976 N.W.2d 383 (citations omitted). “If 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.” *Ruffin*, 401 Wis. 2d 619, ¶28.

I. *Riverside* Violation

¶12 Under *Riverside*, “[t]he Fourth Amendment requires that a judicial determination of probable cause be made within 48 hours of a warrantless arrest” by a “neutral magistrate[.]” *State v. Koch*, 175 Wis. 2d 684, 696, 698, 499 N.W.2d 152 (1993).

¶13 Robinson contends that there were two separate *Riverside* violations: (1) his case was not heard by a “neutral or detached” judicial official; and (2) there was a forty-eight-hour violation.

¶14 First, Robinson has failed to establish a forty-eight-hour violation. The record reflects that Robinson was arrested on April 18, 2019 at 11:50 a.m. and a court commissioner found probable cause on April 20, 2019 at 9:10 a.m. Thus, Robinson had a probable cause determination within the required forty-eight-hour period. Robinson does not challenge the accuracy of the record.

¶15 Robinson complains that there is not a signed CR-215 probable cause form in the record.⁶ However, even if the commissioner never signed the CR-215 form, the commissioner’s formal finding of probable cause, which is reflected in the record, satisfies **Riverside**.

¶16 Second, Robinson has failed to establish that the commissioner was not a “neutral or detached” judicial official. Robinson contends that the commissioner was not neutral or detached because he had determined that probable cause existed for the execution of search warrants in Robinson’s case before the probable cause determination. However, the commissioner’s prior rulings standing alone cannot establish judicial bias. See **Berger v. United States**, 255 U.S. 22, 31 (1921) (stating that bias or prejudice “must be based upon something other than rulings in the case”); **United States v. Grinnell Corp.**, 384 U.S. 563, 583 (1966) (stating that judicial bias “must stem from an extrajudicial source and result in an opinion on the merits on some basis other than what the judge learned from his [or her] participation in the case”).

¶17 Thus, Robinson’s arguments lack merit and he is unable to establish that he was deprived of effective assistance of counsel. **State v. Wheat**, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441 (holding that the “[f]ailure to raise an issue of law is not deficient performance if the legal issue is later determined to be without merit”).

⁶ See **State v. Percy Robinson**, 2024 WI App 50, ¶19, 413 Wis. 2d 534, 12 N.W.3d 535 (explaining that in Milwaukee County, a court commissioner or judge will conduct an all-paper probable cause procedure and review a CR-215 form, which identifies the source of the probable cause statement, the date and time of the warrantless arrest, the probable offense, and the initial bail).

II. Lineup

¶18 After his arrest and prior to the filing of the complaint, Robinson participated in a live lineup attended by Josephine and Kim. The lineup was run two times. After the first run of the lineup, neither Josephine nor Kim made any identification. Josephine asked to see the lineup again because Robinson's hair was obscuring his face. On the second run, all the subjects tucked their hair into hats. After the second run, both Josephine and Kim identified Robinson.

¶19 Robinson argues that trial counsel was ineffective for failing to suppress the lineup identifications made by Josephine and Kim. In support, Robinson contends that he had a right to counsel at the lineups. See *State v. Percy Robinson*, 2024 WI App 50, ¶23, 413 Wis. 2d 534, 12 N.W.3d 535. Even if we assume that Robinson had a right to counsel, this requirement was unsettled law when this case was ongoing in 2019 and 2020. See *id.*, ¶¶23 & n.7, 24, 32-35. Accordingly, trial counsel could not have been ineffective for failing to seek suppression based on a violation of the right to counsel in this case. *Id.*, ¶35.

¶20 Robinson also argues that the lineup was unduly suggestive. According to Robinson, he impermissibly stood out in the first lineup because he was the only participant with dreadlocks covering parts of his face. Hair, however, was not an "important identification factor" to either Josephine or Kim. See *Powell v. State*, 86 Wis. 2d 51, 67, 271 N.W.2d 610 (1978). Neither Josephine nor Kim mentioned Robinson's hair when initially describing him to police. After the first lineup, Josephine asked to run the lineup again because she could not adequately see Robinson's face due to his hair. Additionally, after viewing the lineup, Kim specifically told police that she recognized Robinson by

his eyes. Robinson's dreadlocks did not bear on either Josephine's or Kim's identification.

¶21 Robinson also asserts that the lineup procedure was impermissibly suggestive because Josephine and Kim aided each other in identifying him. At trial, the testimony reflected that while Josephine and Kim were in the same room, they were seated apart and did not communicate with each other. They logged their identifications on a written sheet of paper. Additionally, they explained their identifications in separate interviews with a police officer. Robinson does not point to anything in the record that establishes Josephine and Kim communicated with each other about identification.

¶22 Therefore, we reject Robinson's argument that trial counsel was ineffective for failing to suppress the lineup identifications made by Josephine and Kim. *Wheat*, 256 Wis. 2d 270, ¶14.

III. Other-Acts Evidence

¶23 During trial, Detective Raena Vrtochnick testified regarding her investigation of Robinson. When describing how she found Robinson's address in the Milwaukee Police database, she mentioned that he had been a domestic violence suspect.

¶24 Outside the presence of the jury, the State noted Detective Vrtochnick's domestic violence reference, but argued that it was admissible other-acts evidence. The trial court observed that "no one dwelled on it[.]" Trial counsel for Robinson noted that "it was dealt with as best as we could."

¶25 Robinson claims that his trial counsel should have objected to Detective Vrtochnick's testimony. Robinson, however, has not sufficiently

alleged deficient performance. As the State observes, trial counsel handled the testimony in an objectively reasonable manner. *Strickland*, 466 U.S. at 688. The reference to domestic abuse was brief, there were no details of the allegation provided, and the parties did not “dwell” on the allegation. Trial counsel’s decision to move on and not further delve into the allegation was reasonable. While sometimes a party may request a curative instruction, this risks “‘underscor[ing] the forbidden purpose’ the defendant wishe[d] to avoid.” *State v. Payano*, 2009 WI 86, ¶100 n.22, 320 Wis. 2d 348, 768 N.W.2d 832 (citations omitted). Therefore, we reject Robinson’s argument that trial counsel was ineffective for failing to object to Detective Vrtochnick’s comment.

IV. Photo Exhibits

¶26 Robinson argues briefly that trial counsel was ineffective for not objecting to several photo exhibits as “tainted.” The exhibits include photos of the scene where Candace was assaulted, one of her injuries, and the clothes she had on. Robinson, however, does not provide any explanation of how the photos are tainted. Thus, this claim is vague and undeveloped. See *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Accordingly, we do not address it further.

V. Sentencing Claims

¶27 Robinson makes two claims related to sentencing. First, Robinson contends that trial counsel should have objected to inaccurate information at sentencing. Robinson does not identify the inaccurate statement, nor does he provide any legal authorities. As stated above, we do not address undeveloped arguments. *Id.*

¶28 Second, Robinson argues that trial counsel should have obtained mitigating evidence. At sentencing, trial counsel informed the trial court that Robinson was frustrated that there was not a private presentence investigation report or mitigation memorandum filed. Trial counsel explained to the court that he had declined to do so because in his experience such evidence helped only when the defendant had accepted responsibility and there were underlying factors for committing the crime, such as addiction, mental health, or upbringing. Here, however, Robinson maintained his innocence. Trial counsel stated that “I don’t think that I should be filing anything inconsistent with sworn testimony from [Robinson].”

¶29 Even if we assume that trial counsel performed deficiently, Robinson did not establish prejudice. Prejudice is established when “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. In the context of a sentencing claim, the relevant outcome is the defendant’s sentence. *State v. Benson*, 2012 WI App 101, ¶19, 344 Wis. 2d 126, 822 N.W.2d 484. Here, Robinson does not identify what the mitigating evidence would be. As a result, he has failed to demonstrate a reasonable probability of a different outcome.

¶30 Therefore, for all of the reasons above, we are satisfied that the postconviction court properly denied Robinson’s claims without an evidentiary hearing and we affirm.

By the Court.—Judgment and order affirmed.

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

