

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

May 18, 2000

Cornelia G. Clark  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

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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.

**No. 99-1247-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**STEVEN REINERS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and order of the circuit court for Sauk County: PATRICK J. TAGGART, Judge. *Affirmed.*

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

¶1 PER CURIAM. Steven Reiners appeals from a judgment convicting him of repeated sexual assault of a child, and from an order denying postconviction relief. The issue is whether Reiners received effective assistance from trial counsel. We affirm.

¶2 The State alleged that Reiners had a prolonged sexual relationship with Tracy W., then fifteen. Her testimony about that relationship provided most of the State's evidence at Reiners' jury trial.<sup>1</sup> Reiners' defense consisted primarily of his testimony, in which he denied sexual contact with Tracy, and cross-examination of Tracy that brought out: (1) her numerous pretrial recantations; (2) her anger at Reiners shortly before she first accused him; and (3) her admission that she falsely accused her former stepfather of sexual assault when she was ten. Counsel also had Tracy read several letters she wrote to Reiners in which she described her accusation against him as false, and essentially denied having a sexual relationship with him. However, counsel also had her read a letter that referred to trusting him with her mind and body, protecting him and letting him "do a lot of things I will never let anyone else do to me." In the letter she also told him that she had a negative HIV test. The jury found Reiners guilty notwithstanding the evidence of Tracy's recantations.

¶3 Reiners subsequently brought a postconviction motion alleging ineffective assistance of trial counsel. At the hearing appellate counsel introduced testimony from a friend of Tracy's, Amanda P., who recounted Tracy's statement to her that she falsely accused Reiners. Tracy's former stepfather, Douglas Grimes, also testified that Tracy falsely accused him of sexual assault, and then recanted. Both witnesses stated that they would have testified at trial but were never contacted by trial counsel. Additionally counsel presented testimony from the editor of a local paper about the prosecutor's reported comment that defense counsel's decision to introduce Tracy's letters to Reiners may have backfired.

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<sup>1</sup> The State also offered testimony concerning statements Reiners made to police that were somewhat ambiguous but arguably contained admissions of a sexual relationship with Tracy.

¶4 Based on the testimony of these witnesses, appellate counsel argued that trial counsel unreasonably failed to interview Amanda and Grimes, that introducing Tracy's letters was an unreasonable trial tactic, and that the State was estopped from opposing the motion because the prosecutor's reported comment conceded counsel's ineffectiveness as a matter of law. The trial court rejected these arguments, resulting in this appeal.

¶5 To prove ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that counsel's errors or omissions prejudiced the defense. *State v. Pitsch*, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985). Deficient performance falls outside the range of professionally competent representation and is measured by the objective standard of what a reasonably prudent attorney would do in similar circumstances. *Id* at 636-37. Prejudice results when there is a reasonable probability that but for counsel's errors, the result of the proceeding would have differed. *Id* at 642. Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id* at 637. Whether counsel's behavior was deficient and whether it was prejudicial to the defendant are questions of law. *Id* at 634.

¶6 Trial counsel's failure to interview Amanda P. and Grimes, or call them as witnesses, did not prejudice Reiners. The fact that Tracy recanted and denied her accusations against Reiners many times was established and not disputed. Similarly counsel fully established, without dispute, that Tracy recanted her sexual assault charge against Grimes and later admitted she fabricated it, and did so at a time when she had no motive to lie. Additional cumulative testimony on these undisputed points would have served little purpose. The facts were fully established without it.

¶7 Counsel's use of Tracy's letters was a reasonable trial strategy. Counsel reasonably believed that introducing the one inculpatory letter on cross-examination was better than having the State potentially introduce it on redirect with the implication that Reiners wanted to conceal it. As it happened, counsel elicited Tracy's concession that she wrote it while very angry at Reiners. Counsel also effectively used it as evidence that Tracy was a confused, vacillating and ultimately unreliable witness, essentially offering two diametrically opposed versions of the same events time after time. That the jury subsequently determined otherwise does not render counsel ineffective. *See Strickland v. Washington*, 466 U.S. 668, 689 (1984) (reasonableness determined not by hindsight but by counsel's perspective at the time).

¶8 The prosecutor's comment to a newspaper reporter did not bar the State from defending trial counsel's performance. Even if the statement were admissible, it was not relevant to the legal standard for ineffectiveness, nor was it evidence of ineffectiveness. As noted, effectiveness is not determined by the outcome, but by the reasonableness of the strategy at the time it was adopted.

*By the Court.*—Judgment and order affirmed.

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

