COURT OF APPEALS
DECISION
DATED AND FILED

December 27, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2020-CR **Cir. Ct. No. 2012CF228**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JACKIE DELMAS MASON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

Before Brennan, P.J., Brash and Dugan, JJ.

¶1 PER CURIAM. Jackie Delmas Mason appeals a judgment convicting him of two counts of third-degree sexual assault and three counts of substantial battery. He also appeals orders denying postconviction relief. Mason argues: (1) the circuit court should have granted his motion to sever the charges against him; (2) he was denied the right to self-representation; (3) he received constitutionally ineffective assistance of counsel; and (4) he was denied the right to an impartial judge. We affirm.

¶2 Mason was charged with two counts of third-degree sexual assault and four counts of substantial battery. The victim of all six crimes was Mason's girlfriend, S.L., who is disabled. Mason moved to sever the charges for trial. The circuit court denied the motion. After a jury trial, Mason was convicted of five counts.[1] Mason filed multiple *pro se* postconviction motions, raising a host of different issues. The circuit court denied the motions.

¶3 Mason first argues that the circuit court should have granted his motion to sever the charges against him. "On appeal, review of joinder is a two-step process." ***State v. Locke***, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). First, we consider whether the initial joinder was proper, broadly construing the joinder statute, WIS. STAT. § 971.12 (2015-16),[2] in favor of joinder. ***Locke***, 177 Wis. 2d at 596. That statute provides that two or more charges may be brought together in any of the following situations: (1) if they "are of the same or similar character"; (2) if they "are based on the same act or transaction"; or (3) if

[1] One count of substantial battery was dismissed on Mason's motion.

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

they are based on "[two] or more acts or transactions connected together or constituting parts of a common scheme or plan." Section 971.12(1). "Whether the initial joinder was proper is a question of law." ***Locke***, 177 Wis. 2d at 596.

¶4 Second, we must consider whether Mason was prejudiced by joinder of the counts. *See* WIS. STAT. § 971.12(3); ***Locke***, 177 Wis. 2d at 597 ("even after initial joinder, the [circuit] court may order separate trials of the charges if it appears that a defendant is prejudiced by a joinder of the counts"). The circuit court "must determine what, if any, prejudice would result from a trial on the joined offenses … [and] then weigh this potential prejudice against the interests of the public in conducting a trial on the multiple counts." ***Id.*** We will uphold the circuit court's decision unless it misuses its discretion. *See* ***id.***

¶5 Mason contends that the initial joinder was not proper because the charges were not of the same or similar character: two of the charges were sexual assaults and four of the charges were batteries. He also points out that the charges were separated in time.

¶6 Mason's argument misses the mark. The joinder statute provides *three reasons* that charges may be joined. Even if we agreed with Mason that the charges were not of the same or similar character, the charges were properly joined as an initial matter because they were part of a common scheme or plan. *See* WIS. STAT. § 971.12(1). As aptly explained by the State:

> [t]he charges were based on multiple acts constituting parts of a common scheme or plan. Indeed, all of Mason's charges regarded his continuing domestic abuse against the same woman, S.L., through the course of their relationship. Moreover, Mason's charged sexual assaults and physical abuse occurred in situations in which Mason was in a position of power over S.L. Mason lived with S.L. and was her primary means of transportation, which allowed Mason

> many opportunities to exert physical and psychological control over her.

The initial joinder of the charges was proper.

¶7 Mason next contends that he was prejudiced by the joinder because the charges were all substantiated solely on the word of S.L., who, he argues, was not credible. Mason has not adequately developed this argument. He does not explain why S.L.'s purported lack of credibility was more prejudicial to him in a single trial than it would have been in multiple trials. Therefore, we do not consider this argument further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (We will not consider inadequately developed arguments.).

¶8 Mason next argues that he was denied the right to self-representation. A mentally competent defendant has a constitutional right to represent himself. *See* ***Faretta v. California***, 422 U.S. 806, 834-35 (1975). However, where a defendant "engages in 'serious and obstructionist misconduct,' a judge may deny the exercise of the right of self-representation." ***Imani v. Pollard***, 826 F.3d 939, 947 (7th Cir. 2016) (citation omitted). Here, the circuit court denied Mason permission to represent himself because he repeatedly engaged in deliberately disruptive conduct. As the circuit court observed at one point: "My concern with your competency has always been basically your ability to communicate in the courtroom. You have always been extremely difficult. You have been disruptive. You have been disrespectful." Based on Mason's obstructionist conduct, the circuit court properly denied him permission to represent himself during the trial.

¶9 Mason next argues that he received ineffective assistance from his trial counsel. A defendant claiming ineffective assistance of counsel must show both that his lawyer performed deficiently and "that the deficient performance prejudiced the defense." ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To establish deficient performance, "a defendant must show specific acts or omissions of counsel that were 'outside the wide range of professionally competent assistance.'" ***State v. Nielsen***, 2001 WI App 192, ¶12, 247 Wis. 2d 466, 634 N.W.2d 325 (citation omitted). "To demonstrate prejudice, a 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.***, ¶13. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** If a court concludes that the defendant has not proven one prong of the ***Strickland*** test, it need not address the other prong. *See* ***Strickland***, 466 U.S. at 697.

¶10 Mason first argues that he received ineffective assistance of trial counsel because Mason's trial counsel, Attorney Michael J. Hicks, had his license to practice law temporarily suspended twice while he was representing Mason. Hicks was disciplined for failing to notify Mason of the temporary suspensions, making court appearances on Mason's behalf during one suspension and failing to timely respond to a request by the Office of Lawyer Regulation (OLR) for information. *See* ***Office of Lawyer Regulation v. Hicks***, 2016 WI 9, ¶¶33, 57, 62, 366 Wis. 2d 512, 875 N.W.2d 117. Mason has not shown how the fact that Hicks's license was suspended, by itself, negatively affected the quality of Hick's representation of Mason. The reasons for which Hicks was suspended had nothing to do with Hicks's legal skill pertaining to Mason. A claim of ineffective assistance of counsel is unavailing where a defendant does not show that he or she

was prejudiced. *See* ***Strickland***, 466 U.S. at 697 (if a court concludes that the defendant has not proven one prong of the ***Strickland*** test, it need not address the other prong).

¶11 Mason next argues that he received ineffective assistance of trial counsel because Hicks should *not* have filed a discovery motion to compel production of S.L.'s medical records. We agree with the circuit court that "the arguments the defendant attempts to present with respect to the victim's medical records are completely irrational and without any logical basis." We cannot rule on an issue that is not cogently set forth by Mason. *See* ***State v. Scherreiks***, 153 Wis. 2d 510, 520, 451 N.W.2d 759 (Ct. App. 1989) (We do not decide claims broadly stated by the appellant but not specifically argued.).

¶12 Mason next argues that he received ineffective assistance of trial counsel because Hicks had what Mason characterizes as "an actual conflict of interest." Mason contends there was a conflict of interest because he filed an OLR complaint against Hicks for filing the motion to compel discovery of S.L.'s medical records. This argument is unavailing. The fact that a client has filed an OLR complaint is, without more, legally insufficient to prove a conflict of interest. Hicks's discipline was not related to his substantive representation of Mason. Mason was required to show that the alleged conflict of interest affected counsel's advocacy. Therefore, we reject this claim of ineffective assistance of counsel.

¶13 Finally, Mason argues that he was denied the right to an impartial judge. "The right to an impartial judge is fundamental to our notion of due process." ***State v. Goodson***, 2009 WI App 107, ¶8, 320 Wis. 2d 166, 771 N.W.2d 385. In determining whether a defendant's right to an impartial judge was violated, "we generally apply two tests, one subjective and one objective." ***Id.***

We agree with the State that "Mason engages in no analysis of either the objective or subjective components of judicial bias, and therefore his claims fail." Mason has not adequately developed this argument. As we previously explained, we do not consider inadequately developed arguments. *See* ***Pettit***, 171 Wis. 2d at 647.

By the Court.—Judgment and orders affirmed.

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