

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 23, 2005**

Cornelia G. Clark  
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. 04-0330-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 02CF004333**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES R. HALL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN and TIMOTHY G. DUGAN, Judges. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Charles Hall appeals from the judgment of conviction entered against him and the order denying his motion for

postconviction relief.<sup>1</sup> He argues that he received ineffective assistance of trial counsel. Because we conclude that he did not receive ineffective assistance of counsel, we affirm.

¶2 Hall was convicted of possession of cocaine with intent to deliver and sentenced to thirty-six months of initial confinement and thirty-six months of extended supervision. He filed a motion for postconviction relief, which was denied by the trial court without a hearing.

¶3 Hall argued that he received ineffective assistance of trial counsel because his counsel conceded during the opening argument that the cocaine involved was of a specific amount and packaged for sale. He argued that because this was an element of the offense that the State needed to prove, his counsel should not have conceded this during opening argument. The trial court denied the motion, finding that he was not prejudiced by this concession for three reasons: 1) the defendant subsequently conceded by stipulation that the State could prove this element of the offense; 2) the court held a colloquy with the defendant in which he stated that he had signed the stipulation and agreed that the State could prove that element of the offense; and 3) there was no reasonable probability that the jury would have found no intent to deliver based on the testimony presented to it.

¶4 To establish an ineffective assistance of counsel claim, a defendant must show both that counsel's performance was deficient and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S.

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<sup>1</sup> The Honorable Michael B. Brennan sentenced Hall while the Honorable Timothy G. Dugan heard the motion for postconviction relief.

668, 687 (1984). A reviewing court may dispose of a claim of ineffective assistance of counsel on either ground. *Id.* at 697. We will not “second-guess a trial attorney’s ‘considered selection of trial tactics or the exercise of professional judgment in the face of alternatives that have been weighed by trial counsel.’ A strategic trial decision rationally based on the facts and the law will not support a claim of ineffective assistance of counsel.” *State v. Elm*, 201 Wis. 2d 452, 464-65, 549 N.W.2d 471 (Ct. App. 1996) (citations omitted).

¶5 Hall argues that he was not counseled about the concession before the concession was made, and that by the time the stipulation was entered, it was too late. The theory of the defense at trial was that the cocaine was not Hall’s. Counsel’s concession that the cocaine was packaged for resale was consistent with this theory. Further, the State would have been able to easily prove that the cocaine was packaged for resale. Under these circumstances, we conclude that counsel’s decision to acknowledge these facts in the opening argument was a reasonable strategic decision, and Hall was not prejudiced by it. Consequently, we affirm the judgment and order of the circuit court.

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

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

