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110 EAST MAIN STREET, SUITE 215  
P.O. BOX 1688  
MADISON, WISCONSIN 53701-1688  
Telephone (608) 266-1880  
TTY: (800) 947-3529  
Facsimile (608) 267-0640  
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**DISTRICT I**

February 24, 2026

To:

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Circuit Court Judge  
Electronic Notice

John W. Kellis  
Electronic Notice

Anna Hodges  
Clerk of Circuit Court  
Milwaukee County Safety Building  
Electronic Notice

Brett Lee McKellar  
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You are hereby notified that the Court has entered the following opinion and order:

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2023AP2290-CR

State of Wisconsin v. Vincent Edward Morris, Jr.  
(L.C. # 2020CF677)

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

**Summary disposition orders 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).**

Vincent Edward Morris, Jr., appeals from a judgment, entered on a jury's verdict, convicting him on one count of repeated sexual assault of the same child. Morris also appeals from an order denying his postconviction motion. Morris contends the circuit court erred when it denied his postconviction motion without a hearing. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24). We disagree and affirm.

Morris was charged with repeated sexual assault of a child after then-thirteen-year-old J.R.R. reported that Morris, the boyfriend of J.R.R.'s mother, had sexual contact with her at their

home on three occasions in 2015, 2016, and 2017. In a statement after his arrest, Morris denied consciously engaging in sexual activity with J.R.R., but said it was possible it had occurred from “sleep sex.”

Just prior to the start of the trial, defense counsel noted that he and the prosecutor had agreed to excise two portions of an audio-recorded statement given by Morris due to its content, which included a reference to Morris’s prior felony conviction for sexual assault. When J.R.R.’s mother subsequently testified at trial, she mentioned four times that Morris had been “incarcerated,” although she never revealed the basis for the incarceration. Defense counsel did not object to any of those references. Morris also testified on his own behalf, during which he acknowledged four prior convictions. The jury returned a guilty verdict, and the trial court sentenced Morris to twenty-eight years of imprisonment.

Morris filed a postconviction motion for a new trial, arguing that his attorney had been ineffective for not objecting to or moving to strike the references to incarceration, and for failing to move for a mistrial or request a curative instruction. The circuit court<sup>1</sup> denied the motion without a hearing, concluding that even presuming counsel had performed deficiently, Morris was not prejudiced by that performance.

On appeal, Morris argues that his motion was sufficiently pled to require an evidentiary hearing. “Whether a defendant’s postconviction motion alleges sufficient facts to entitle the defendant to a hearing for the relief requested is a mixed standard of review.” *State v. Allen*,

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<sup>1</sup> The Honorable Stephanie Rothstein presided at trial and imposed sentence, and will be referred to herein as the trial court. The Honorable David C. Swanson denied the postconviction motion, and will be referred to herein as the circuit court

2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. First, we evaluate whether the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief; this is a question of law that we review de novo. *Id.* If the motion alleges such facts, then the circuit court must hold an evidentiary hearing. *Id.*

However, the sufficiency of Morris’s motion is not at issue; that is, the circuit court did not deny the motion because the motion was insufficiently pled but because the record demonstrated Morris was not entitled to relief on his claims. Where 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.

The actual issue for our review is the circuit court’s determination that the record shows no prejudice that would warrant relief on the ineffective assistance claims. “Whether a defendant received ineffective assistance of counsel presents a mixed question of law and fact.” *State v. Domke*, 2011 WI 95, ¶33, 337 Wis. 2d 268, 805 N.W.2d 364. We uphold the circuit court’s findings of fact unless clearly erroneous, though we review de novo the ultimate conclusion of whether counsel was ineffective. *See id.*

To prevail on an ineffective assistance of counsel claim, the defendant must show both that counsel’s representation was deficient and that the deficiency was prejudicial. *Ruffin*, 401 Wis. 2d 619, ¶29. To show deficient performance, a defendant must present facts from which we can conclude that the attorney’s representation fell below objective standards of reasonableness. *See State v. McDougle*, 2013 WI App 43, ¶13, 347 Wis. 2d 302, 830 N.W.2d 243. To establish prejudice, the 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. A reasonable

probability is a probability sufficient to undermine confidence in the outcome.” *See id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694 (1984)).

Here, the circuit court presumed that trial counsel performed deficiently by not objecting to or moving to strike the testimonial references to Morris’s incarceration.<sup>2</sup> Likewise, we will assume without deciding that trial counsel’s performance was deficient. Morris asserts that he was prejudiced by the incarceration references. He likens the testimony to the jury seeing him in “jail garb,” allowing jurors to “speculate as to why” he had been incarcerated and undermining the presumption of innocence. However, we agree with the circuit court that the record reveals that there is no reasonable probability of a different result, so there is no prejudice and no ineffective assistance.

Morris himself testified that he had four prior convictions. “A prior conviction on any crime is relevant to the credibility of a witness’s testimony.” *State v. Kruzycki*, 192 Wis. 2d 509, 524, 531 N.W.2d 429 (Ct. App. 1995). “Our law presumes that a person who has been convicted of a crime is less likely to be a truthful witness than a person who has not been convicted.” *Id.* Thus, the jury heard admissible prior conviction evidence from which it could have inferred that Morris had been incarcerated as a result of those convictions. *See State v. Cooks*, 2006 WI App 262, ¶48, 297 Wis. 2d 633, 726 N.W.2d 322 (“[T]he jury could have easily inferred that [the Defendant] had been in prison from his own testimony regarding his eight criminal

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<sup>2</sup> The circuit court commented that trial counsel likely refrained from objecting so as to avoid calling further attention to the incarceration references, but also correctly noted that only trial counsel’s testimony could confirm such a supposition

convictions.”). The jury did not, however, hear any evidence of the reasons for Morris’s prior incarceration, or even that the incarceration was due to felony convictions.

Further, J.R.R. gave credible testimony about her abuse at Morris’s hands. Her testimony was supported by her forensic interview, which was played for the jury, and other evidence. Morris, on the other hand, undermined his own credibility. Prior to his testimony, the jury had heard portions of Morris’s police interview, in which he explained that he and J.R.R.’s mother sometimes engaged in “sleep sex.” The detective on the tape asked Morris whether “this stuff could have happened [with J.R.R.] while you were sleeping and you just don’t remember it?” Morris answered, “Yeah, probably.” When Morris later testified, on both direct and cross-examination, he denied making any of the recorded statements. The trial court later observed at sentencing that “in this [c]ourt’s estimation, you hurt yourself by testifying in the manner that you testified, given the recording of you in your own words that was played for the jury.”

Thus, it is not reasonably probable that the brief references to Morris’s prior incarceration were outcome determinative; that is, there is no reasonable probability that the result of the trial would have been different had trial counsel objected to or moved to strike the testimony. Thus, there was no prejudice to Morris and no ineffective assistance from counsel.

Morris’s postconviction motion also asserted that trial counsel was ineffective for failing to move for a mistrial based on the incarceration references. A mistrial is the “most serious of remedies.” *State v. Debrow*, 2023 WI 54, ¶17, 408 Wis. 2d 178, 992 N.W.2d 114. “The decision whether to grant a motion for a mistrial lies within the sound discretion of the trial court.” *State v. Bunch*, 191 Wis. 2d 501, 506, 529 N.W.2d 923 (Ct. App. 1995). The court “must determine, in light of the whole proceeding, whether the basis for the mistrial request is

sufficiently prejudicial to warrant a new trial,” although “the law prefers less drastic alternatives” if available. *Id.* at 506, 512. A trial court properly exercises discretion when it considers the facts and circumstances, hears arguments from both parties, and assesses available remedies before ordering a mistrial. *See Debrow*, 408 Wis. 2d 178, ¶¶15-18.

Here, the circuit court commented that it was unpersuaded that the trial court would have granted a mistrial. Trial counsel is not ineffective for failing to pursue a losing argument. *See State v. Wheat*, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441. The circuit court stated that the trial court would have, at most, struck the testimony or provided a curative jury instruction. However, trial counsel was still not ineffective for failing to seek those remedies because, as explained above, references to Morris’s incarceration did not determine the outcome of the trial. We therefore agree with the circuit court’s conclusion that trial counsel’s performance was not prejudicial, and the circuit court did not err in denying the postconviction motion without a hearing.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*