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**DISTRICT II**

April 1, 2026

*To:*

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Circuit Court Judge  
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Troy Dean Cross  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Daniel J. O'Brien  
Electronic Notice

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

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2025AP288-CR	State of Wisconsin v. Dylon Michael Grupe (L.C. #2022CF667)
2025AP293-CR	State of Wisconsin v. Dylon Michael Grupe (L.C. #2022CF668)

Before Neubauer, P.J., Gundrum, and Grogan, JJ.

**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).**

In these consolidated appeals, Dylon Michael Grupe appeals judgments of conviction, entered following his no-contest pleas, for possession of methamphetamine and second-degree sexual assault by use of force, both as a repeater. He also appeals orders denying postconviction relief. On appeal, Grupe argues the circuit court erred by denying his plea withdrawal motion based on his claims of ineffective assistance of trial counsel without an evidentiary 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).<sup>1</sup> We affirm.

Grupe was charged in separate criminal complaints. In Sheboygan County Circuit Court Case No. 2022CF667, the State charged Grupe with six counts arising out of the theft and fraudulent use of a credit card and the possession of methamphetamine. In Sheboygan County Circuit Court Case No. 2022CF668, the State charged Grupe with four counts arising out of a forcible sexual assault of a domestic partner. Pursuant to a plea agreement, Grupe pled to possession of methamphetamine and second-degree sexual assault by use of force, both as a repeater. The circuit court sentenced Grupe to prison.

After sentencing, Grupe moved to withdraw his no-contest pleas on the basis that he received ineffective assistance of trial counsel. In his motion, Grupe outlined the procedural history of the cases, including the fact that Grupe was incarcerated in prison for a majority of the pendency of the cases. Grupe asserted trial counsel was ineffective because: counsel only met with Grupe “in person” one time before he entered his pleas; counsel did not file any motions in limine, witness lists, or proposed jury instructions; counsel did not explore Grupe’s potential defenses to the charges; counsel did not request a pre-sentence investigative report to be prepared before sentencing; and Grupe “did not understand everything that was happening because his attorney had not taken the time to go over everything and explain it to him[,]” including the lifetime sex offender registration.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2023-24 version.

The State filed a response to Grupe’s plea withdrawal motion, asking the court to deny the motion without a *Machner*<sup>2</sup> hearing. The State asserted that Grupe’s allegations were conclusory and did not establish ineffective assistance of counsel. The State also argued that the Record established Grupe made a conscious decision to plead to the two charges. At the plea hearing, Grupe personally advised the court that he wanted to resolve these cases without a trial, that by doing so trial counsel would no longer investigate anything, that he agreed the State would be able to prove the offenses at trial, that he understood the court would consider giving more time to complete any investigation, that he understood the sex offender registry requirements, and that Grupe was satisfied with his trial counsel’s representation.

Following a non-evidentiary motion hearing, the circuit court denied Grupe’s motion. The court found that the allegations in Grupe’s motion were conclusory and undermined by the transcript of the plea hearing. Grupe appeals.

“When a defendant moves to withdraw a plea after sentencing, the defendant ‘carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a manifest injustice.’” *State v. Cain*, 2012 WI 68, ¶25, 342 Wis. 2d 1, 816 N.W.2d 177 (citation omitted). Ineffective assistance of counsel is one type of manifest injustice. *Id.*, ¶26. To prevail on a claim of ineffective assistance of counsel, the defendant must prove both that his lawyer’s representation was deficient and that he suffered prejudice because of that deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

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<sup>2</sup> *State v. Machner*, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

“A motion claiming ineffective assistance of counsel does not automatically trigger a right to a *Machner* testimonial hearing[.]” *State v. Phillips*, 2009 WI App 179, ¶17, 322 Wis. 2d 576, 778 N.W.2d 157. The circuit court has discretion to deny an evidentiary hearing if “the defendant fails to allege sufficient facts in his or her motion, if the defendant presents only conclusory allegations or subjective opinions, or if the record conclusively demonstrates that he or she is not entitled to relief.” *Id.*

On appeal, Grupe asserts that his postconviction motion was sufficiently pled such that the circuit court should have held a *Machner* hearing. He also urges this court to conclude as a matter of law that his trial counsel was ineffective and he should therefore be permitted to withdraw his pleas.

We reject Grupe’s appellate arguments. First, even if we assumed the allegations Grupe included in his postconviction motion regarding counsel’s performance were enough for Grupe to satisfy the pleading requirements for deficient performance, Grupe failed to sufficiently plead that he was prejudiced by counsel’s deficient performance. To establish prejudice in the context of a plea, Grupe is required to show “there is a reasonable probability that, but for the counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *State v. Bentley*, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996) (citation omitted). To make that showing, “[a] defendant must do more than merely allege that he would have pled differently; such an allegation must be supported by objective factual assertions.” *Id.* at 313. “A ‘bare-bones allegation’ that a defendant would have pled differently ... [is] not sufficient to require the trial court to direct that an evidentiary hearing be conducted.” *Id.* at 316.

In this case, Grupe’s postconviction motion fails to allege any facts that demonstrate he was prejudiced by trial counsel’s purported deficiencies. He never offered any objective factual assertions that explain how or why he would have gone to trial but for counsel’s purported errors. *See id.* at 316. His motion simply contains allegations about what counsel purportedly failed to do. As such, Grupe’s motion is insufficiently pled. The circuit court did not err by denying his ineffective-assistance-of-counsel claims without a hearing. *See Phillips*, 322 Wis. 2d 576, ¶17. We also cannot conclude from this postconviction motion that counsel was ineffective as a matter of law. *See State v. Sholar*, 2018 WI 53, ¶50, 381 Wis. 2d 560, 912 N.W.2d 89 (“A *Machner* hearing is a prerequisite for consideration of an ineffective assistance claim.”).

IT IS ORDERED that the judgments and orders of the circuit court are summarily affirmed pursuant to 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*