



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

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
Web Site: www.wicourts.gov

DISTRICT II

May 6, 2026

To:

Hon. James K. Muehlbauer
Circuit Court Judge
Electronic Notice

Gregory Bates
Electronic Notice

Sherry Coykendall
Register in Probate
Washington County Courthouse
Electronic Notice

Anne Christenson Murphy
Electronic Notice

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

2025AP528-CR

State of Wisconsin v. Zachary Paul Nush (L.C. #2022CF241)

Before Neubauer, P.J., Grogan, and Lazar, 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).

Zachary Paul Nush appeals from a judgment of conviction for exposing a child to harmful descriptions and disorderly conduct. He also appeals an order denying postconviction relief. On appeal, Nush argues the circuit court erred by denying his postconviction motion 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).¹ We affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

The State charged Nush with child enticement based on his sexual advances toward a child. Pursuant to a plea agreement, Nush pled to amended charges of exposing a child to harmful materials and disorderly conduct. As relevant for this appeal, the child victim and her mother requested \$11,254.28 in restitution. The amount comprised of \$526.14 in past therapy costs for the victim's mother, \$5,200 in future therapy for the child victim, \$5,200 in future therapy for the victim's mother, and \$328.14 for a security camera and associated equipment.

As for the therapy costs, the child's mother testified that there was no insurance and they had to pay out of pocket for each therapy session. The mother testified she had already paid for \$526.14 in therapy for herself. She also testified that going forward each therapy session cost \$200, and the sessions were held every two weeks. She explained her requested therapy costs represented one year of therapy for herself and for her daughter. She stated "[a]fter one year, if we still continue to need therapy, we will continue to seek it for ourselves."

Nush's counsel objected to restitution for the security camera and equipment; counsel did not object to the therapy costs. Ultimately, the circuit court imposed \$11,254.28 in restitution.

Nush brought a postconviction motion challenging the restitution amount. He argued that counsel was ineffective for failing to challenge the costs for therapy services. Nush argued that the therapy costs were not authorized by WIS. STAT. § 973.20(3) because Nush did not cause "bodily harm," and they were not authorized by § 973.20(4m) because he was not convicted of one of the specific statutes for which restitution for professional services could be awarded.

The circuit court denied Nush’s motion without a *Machner*² hearing. It reasoned, in part, that the restitution for therapy was authorized under WIS. STAT. § 973.20(5)(a) as special damages. The court explained “it was established by a preponderance [of] the evidence at the Restitution Hearing that the need for therapy and the cost of required therapy was caused by Nush’s criminal conduct. The cost of therapy was readily ascertainable, and certainly could be recovered in a civil proceeding.” Nush appeals.

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). However, “[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.*

We conclude the circuit court appropriately exercised its discretion by determining the record conclusively demonstrated Nush is not entitled to relief on his ineffective-assistance-of-counsel claim. The court’s restitution award for therapy is authorized by WIS. STAT. § 973.20(5)(a) as special damages. Section 973.20(5)(a) provides that “[i]n any case,” the court’s restitution order may require the defendant to: “Pay all special damages, but not general

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

damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.” *Id.* Special damages, in contrast to general damages, are “[a]ny readily ascertainable pecuniary expenditure paid out because of the crime[.]” *See State v. Holmgren*, 229 Wis. 2d 358, 365, 599 N.W.2d 876 (Ct. App. 1999).

Here, the evidence from the restitution hearing established that \$526.14 had already been paid for therapy and a year’s worth of therapy for both the child victim and the victim’s mother was \$10,400. Because the therapy costs are allowed under WIS. STAT. § 973.20(5)(a) as special damages, and the evidence presented at the restitution hearing supports the circuit court’s award, counsel was not ineffective for failing to object to the restitution amount on the basis it was not authorized under § 973.20. *See State v. Dalton*, 2018 WI 85, ¶3, 383 Wis. 2d 147, 914 N.W.2d 120 (counsel was not ineffective for failing to file a meritless motion). The court did not err by denying Nush’s ineffective-assistance-of-counsel claim without a hearing. *See Phillips*, 322 Wis. 2d 576, ¶17.

IT IS ORDERED that the judgment and order 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.

Samuel A. Christensen
Clerk of Court of Appeals