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**DISTRICT II**

June 10, 2026

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

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2024AP2165-CR

State of Wisconsin v. Izavier L. Wiley (L.C. #2022CF1478)

Before Neubauer, P.J., Gundrum, 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).**

Izavier L. Wiley appeals from a judgment of conviction and an order denying his postconviction motion without an evidentiary hearing. Wiley argues that he received ineffective assistance of counsel. 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> For the following reasons, we affirm.

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

The State charged Wiley with crimes arising from a domestic violence incident, including possession of a firearm by a felon, second-degree recklessly endangering safety, strangulation and suffocation, felony bail jumping, battery, theft of a firearm, pointing a firearm at another person, and reckless driving-endanger safety, second offense. The State alleged that Wiley had a prior violent felony for purposes of a penalty enhancer on the strangulation and suffocation count.

Before trial, Wiley stipulated that he was a convicted felon for the felon-in-possession charge, that he was released on bond in a felony case for the felony bail-jumping charge, and that he had a prior violent felony for the strangulation enhancer. The jury convicted Wiley of possession of a firearm by a felon, second-degree recklessly endangering safety, felony bail jumping, battery, and theft of a firearm. It acquitted him of strangulation and suffocation, pointing a firearm at another person, and reckless driving. Because the jury acquitted Wiley of strangulation and suffocation, it did not answer the special-verdict question asking whether he had a prior violent felony.

Wiley moved for postconviction relief, arguing that trial counsel was ineffective for stipulating to the violent felony enhancer and for failing to object to the related instruction. The circuit court agreed that counsel performed deficiently because Wiley's attempted armed robbery conviction did not qualify as a violent felony under the applicable statute. *See* WIS. STAT. § 940.235(2). However, the court denied the motion without a hearing, concluding that Wiley had not shown prejudice.

A postconviction motion requires an evidentiary hearing only if it alleges sufficient material facts that, if true, would entitle the defendant to relief. *State v. Allen*, 2004 WI 106,

¶¶9, 36, 274 Wis. 2d 568, 682 N.W.2d 433. If the motion fails to do so, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may deny the motion without a hearing. *State v. Ruffin*, 2022 WI 34, ¶28, 401 Wis. 2d 619, 974 N.W.2d 432. To establish ineffective assistance, Wiley must prove deficient performance and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Prejudice requires a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* at 694. In a multi-count case, prejudice is assessed count by count. *State v. Sholar*, 2018 WI 53, ¶58, 381 Wis. 2d 560, 912 N.W.2d 89.

Wiley argues that he received ineffective assistance of counsel because the jury heard that he had been previously convicted of a violent felony based on counsel's erroneous stipulation pertaining to the strangulation charge. The State concedes deficient performance.<sup>2</sup> We conclude, however, that the record establishes that there was no reasonable probability of a different result had the error not occurred.

The jury properly heard other felony history evidence. Wiley's felony conviction was an element of felon in possession of a firearm, and his felony bond status was an element of felony bail jumping. The jury acquitted Wiley of strangulation and suffocation, the count to which the erroneous stipulation applied, and also acquitted him of pointing a firearm at another person and reckless driving. Those acquittals are not dispositive, but they undermine Wiley's claim that the jury used the violent felony label to convict him based on bad character. *See State v. Perkins*,

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<sup>2</sup> The concession is well founded. The State alleged that Wiley's 2014 attempted armed robbery conviction was the violent crime supporting the strangulation enhancer. Attempted armed robbery did not qualify under the relevant statutory definition. *See* WIS. STAT. § 940.235(2). Counsel therefore should not have stipulated that Wiley had a prior violent felony and should have objected to the related instruction.

2000 WI App 137, ¶25, 237 Wis. 2d 313, 614 N.W.2d 25, *rev'd on other grounds*, 2001 WI 46, 243 Wis. 2d 141, 626 N.W.2d 762; *State v. Prineas*, 2009 WI App 28, ¶36, 316 Wis. 2d 414, 766 N.W.2d 206; *State v. Marcum*, 166 Wis. 2d 908, 926, 480 N.W.2d 545 (Ct. App. 1992).

Moreover, Wiley has not shown prejudice count by count. The felon-in-possession count turned on possession. A neighbor testified that Wiley was carrying a handgun outside his apartment building while arguing with the victim, Denise.<sup>3</sup> Police later stopped Wiley while driving and found a gun under the driver's side seat. Denise told police that Wiley was holding a gun and pointing it at her, and threatening to kill her, when he came out of the building following her. There is no reasonable probability that the jury would have acquitted Wiley of possessing the firearm had it not heard the word "violent."

The felony bail-jumping conviction rested on the felon-in-possession offense as the new law violation. Because Wiley has not shown a reasonable probability of acquittal on felon-in-possession of a firearm charge, he has not shown prejudice on felony bail jumping.

Wiley also has not shown prejudice on theft of the firearm. Although Denise testified at trial that she left her gun in the white Chevrolet Malibu where the police found it when they arrested Wiley, she told police immediately after the incident that Wiley knew where she kept the lockbox key, probably took the gun from the lockbox, and did not have permission to take it. The neighbor's testimony that Wiley brandished a handgun outside the apartment before leaving in the white Chevrolet also supported the theft verdict.

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<sup>3</sup> We use a pseudonym for the victim. *See* WIS. STAT. RULE 809.86(4).

The recklessly endangering safety conviction was also supported by evidence independent of the erroneous stipulation. The neighbor testified that Wiley pulled out a handgun while arguing with Denise, with a child between them, and threatened to shoot Denise if she came after him. Denise told police that the gun was loaded, and an officer who recovered the gun testified that the gun had rounds in the magazine and a round in the chamber. The jury acquitted Wiley of pointing a firearm at another person, but the offenses had different elements and the jury could consider the surrounding dangerous circumstances.

Finally, the battery conviction was supported by Denise's contemporaneous statements and the officer's observations. A police officer testified that Denise reported that Wiley punched her in the head and that she did not consent. The officer observed Denise holding her head and noted a laceration below her lip. Even though Denise testified at trial that Wiley did not hit her, the jury could credit Denise's contemporaneous statements over her trial testimony.

In sum, the record conclusively demonstrates no reasonable probability of a different result. Because Wiley cannot show on this record that there is a reasonable probability that, but for counsel's deficient performance, the result of the proceeding would have been different, his ineffective assistance of counsel claim fails. *See Strickland*, 466 U.S. at 694. Therefore, the circuit court properly denied Wiley's postconviction motion without a hearing.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court 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*