STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2016AP000982

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DESMOND ANTHONY MATTIS,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING A MOTION
FOR POSTCONVICTION RELIEF ENTERED IN
ST. CROIX COUNTY CIRCUIT COURT,
THE HONORABLE SCOTT R. NEEDHAM,
CIRCUIT JUDGE, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF AND APPENDIX

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PLAINTIFF-RESPONDENT'S BRIEF

STATEMENT OF THE ISSUE

Is Mattis entitled to an evidentiary hearing to determine whether he is entitled to postconviction relief?

The trial court determined that Mattis was not entitled to an evidentiary hearing.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will adequately address the issue presented, and oral argument will not significantly assist the court in deciding this appeal.

The State takes no position on publication of this Court's decision and opinion.

STATEMENT OF THE CASE

On November 6, 2013, the State charged Mattis with Attempting to Flee or Elude a Traffic Officer (Count 1), Disorderly Conduct-Domestic Abuse Assessments (Count 2), and Contact after a Domestic Abuse Arrest (Count 3). (R.2). On September 15, 2014, Mattis entered no contest pleas to amended counts 1 (Misdemeanor Fleeing) and 2 (Disorderly Conduct). (R.19). Mattis also entered into a Deferred Prosecution Agreement on Count 3 on the same date. (R.15). Mattis was also informed of his appeal rights on September 15, 2014. (R.14).

Mattis filed a "Motion to Vacate Judgment of Conviction for Disorderly Conduct for Reason that it Deny [sic] the Defendant Substantive Due Process" on March 25, 2016. (R.24). This was Mattis' first postconviction motion. This motion argued that the circuit court should vacate the disorderly conduct conviction because his counsel was ineffective, Mattis had newly discovered evidence, and that Mattis was incompetent to stand trial. (R.24:1; R-App. 2). Mattis cited Wis. Stat. § 974.06(2) as the authority allowing him to bring this motion. (R.24:1; R-App. 2).

The State filed a motion in response, arguing that Mattis' motion should be summarily denied. (R.25). The circuit court agreed, and denied Mattis' motion without an evidentiary hearing on April 28, 2016. (R.26). On May 11, 2016, Mattis filed a Notice of Appeal, indicating that he was appealing the circuit court's April 28 order. (R.30).

ARGUMENT

I. STANDARD OF REVIEW.

The issue of whether Mattis is entitled to an evidentiary hearing on his postconviction motion is an issue of law. *See* State v. Pinno, 2014 WI 74, ¶ 38, 356 Wis. 2d 106, 850 N.W.2d 207, 219, cert. denied, 135 S. Ct. 870, 190

L. Ed. 2d 706 (2014). Therefore, the standard of review in this case is de novo. Id. If a postconviction motion does not allege sufficient facts to warrant a hearing, the circuit court has discretion over whether or not to grant a hearing. State v. Allen, 2004 WI 106, ¶ 9, 274 Wis. 2d 568, 682 N.W.2d 433. This decision is reviewed by the erroneous exercise of discretion standard. State v. Romero-Georgana, 2014 WI 83, ¶ 30, 360 Wis. 2d 522, 540, 849 N.W.2d 668, 677.

II. THE CIRCUIT COURT PROPERLY DENIED MATTIS' POSTCONVICTION MOTION WITHOUT A HEARING.

Mattis appeals the circuit court's denial of his postconviction motion. Mattis essentially argues that his counsel was ineffective based upon allegations that his counsel coerced Mattis into waiving certain rights due to Mattis' mental health. (Pet. Br. 3). Mattis also challenges the investigation of the officers involved. (*Id.*) However, these issues are not properly before this court because these issues were not decided by the circuit court. Rather, the circuit court denied Mattis' motion without a hearing. Thus, the issue is whether the circuit court correctly denied Mattis' motion without a hearing.

If a postconviction motion sets forth facts that would entitle a defendant to relief, if those facts are true, then the circuit court must hold an evidentiary hearing on the motion. Pinno, 356 Wis. 2d 106, ¶ 38. The facts must be "sufficient material facts—e.g., who, what, where, when, why, and how," in order to raise a claim for relief and warrant a hearing. Allen, 274 Wis. 2d 568, ¶ 2. "However, if the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court has the discretion to grant or deny a hearing." Id., ¶ 9 (citations omitted).

Mattis' postconviction motion alleges three issues: ineffective assistance of counsel, newly discovered evidence, and his competency to stand trial. (R.24). Mattis' brief phrases the issues slightly differently than in his

postconviction motion; however, the issues are essentially the same.

A. Mattis provided one allegation of ineffective assistance of counsel, and therefore, he was not entitled to a hearing.

Mattis first argues in his postconviction motion that his trial court counsel was ineffective. (R.24). To prevail on a claim of ineffective assistance of counsel, a defendant must meet a two prong test and show "(1) that his counsel's performance was deficient; and (2) that the deficient performance was prejudicial." Romero-Georgana, 360 Wis. 2d 522, ¶ 39; citing Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Mattis provides one example that he argues would deem his trial counsel to be ineffective. Mattis states that during his first meeting with his counsel, he informed his counsel that the police report contained "fabrication." (R.24:5; Resp. App. 6). Mattis alleges that his trial counsel responded, "don't pay that any mind." (R.24:5; R-App. 6). Mattis concludes that this was "negligence" and therefore counsel was ineffective. (R.24:5; R-App. 6).

However, if true, this alone would not entitle Mattis to relief. Mattis does not show that this constituted deficient performance and that this performance was prejudicial. As previously stated, a defendant must allege specific facts to obtain a hearing. See Allen, 274 Wis. 2d 568, ¶ 9. Conclusory allegations are not enough to warrant a hearing, and in this case, Mattis' statements regarding his counsel's performance consist of conclusory statements. As such, the trial court properly denied Mattis' postconviction motion regarding ineffective assistance of counsel without a hearing.

B. Mattis' statement of events does not qualify as newly discovered evidence.

Next, Mattis argues that newly discovered evidence warrant reversal of his conviction. (R.24:1; R-App. 2). Newly discovered evidence may warrant a new trial where the defendant proves: "(1) the evidence was discovered after

conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; and (4) the evidence is not merely cumulative." State v. Plude, 2008 WI 58, ¶ 32, 310 Wis. 2d 28, 48, 750 N.W.2d 42, 52 (internal citation omitted). For example, this Court has found a codefendant's newly available testimony is not considered newly discovered evidence where the codefendant previously refused to testify, because the defendant was aware of the testimony prior to trial. State v. Jackson, 188 Wis. 2d 187, 192, 525 N.W.2d 739, 741 (Ct. App. 1994).

Here, the facts Mattis relies upon are contained in a non-sworn written statement authored by Mattis. (R.24:3-4; Resp. App. 4-5). This written statement consists of Mattis' account of the events that led to his charges. Thus, Mattis falls short of this standard. Similar to the situation in Jackson, Mattis' version of events was known to him prior to the conviction, because this was Mattis' perception of how the events occurred. As such, his claim fails on the first prong of the analysis.

The circuit court properly denied Mattis' motion without a hearing on the grounds of newly discovered evidence because the facts alleged by Mattis, even if true, would not entitle Mattis to relief.

C. Competency was not raised at the Trial Court Level, and Mattis is not entitled to relief based on his alleged incompetence.

Mattis' final argument in his postconviction motion is that "he was wrongly convicted because the [sic] he was mentally incompetent for trial." (R.24). Mattis alleges that the circuit court knew of Mattis' mental health at the time of sentencing based on the conditions of probation imposed by the court ("Maintain current mental health care treatment"). (R.19). Competency may be raised at various stages of proceedings while at the circuit court level. Wis. Stat. § 971.14. However, Mattis' postconviction motion lacks any examples of his alleged incompetency. Moreover, the record does not contain any mention that competency was raised at the circuit court level. As such, Mattis is not entitled to relief

on this issue, and the circuit court correctly denied his motion without a hearing.

CONCLUSION

For the reasons set forth above, the State respectfully requests that this Court affirm the circuit court's decision to deny Mattis' motion without a hearing.

Dated this ___ day of October, 2016.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1,379 words.

Dated this ____ day of October, 2016.

Signed:

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this ____ day of October, 2016.

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CERTIFICATE OF MAILING

I certify that this brief was deposited into the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on October 24, 2016.

I further certify that on October 24, 2016, I served three copies of this brief via United State mail upon all opposing parties.

I further certify that the brief was correctly addressed and postage was prepaid.

Dated this ____ day of October, 2016.

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