STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

_____

Case No. 2019AP002383 - CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAIMON V. JACKSON,

Defendant-Appellant.

APPEAL FROM JUDGMENT OF CONVICTION ENTERED IN CIRCUIT COURT FOR RACINE COUNTY, THE HONORABLE FAYE M. FLANCHER PRESIDING, AND ORDER DENYING POSTCONVICTION RELIEF ENTERED IN CIRCUIT COURT FOR RACINE COUNTY, THE HONORABLE MARK F. NIELSEN PRESIDING.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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STATEMENT OF THE ISSUES

1. Whether the circuit court determined in error that trial counsel's deficient performance prejudiced Mr. Jackson when trial counsel failed to confer with Mr. Jackson prior to the jury trial date.

   The circuit court determined that trial counsel's performance was deficient; however, the deficient performance did not prejudice Mr. Jackson and denied Mr. Jackson's ineffective assistance of counsel claim.

2. Whether the circuit court erroneously denied Mr. Jackson's motion to have trial counsel withdraw.

   On review the circuit court determined that the circuit court exercised proper discretion in determining Mr. Jackson's request to have trial counsel withdraw and denied Mr. Jackson's claim.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Neither is requested.

STATEMENT OF THE CASE

This appeal stems from the circuit court's decision and order denying the motion for postconviction relief filed on November 15, 2019, (52), and from the circuit court's Judgment of Conviction entered on June 13, 2017. (33). For purposes of this appeal, Defendant-Appellant, Daimon V. Jackson, will hereinafter be referred to as "Jackson" and the State of Wisconsin will hereinafter be referred to as "State."

On November 9, 2018, Jackson filed a postconviction motion claiming that his trial counsel provided ineffective assistance of counsel and that the circuit court erroneously denied Jackson's request for trial counsel to withdraw. (46).

Jackson's claims resulted from Jackson's representation by Mr. Scott F. Anderson ("Trial Counsel"). On December 15, 2014, the State charged Jackson with one count of Felony Murder as a Party to a Crime, one count Possession of a Firearm by a Felon as a Party to a Crime and one count of Armed Robbery with use of Force as a Party to a Crime. (1). Trial Counsel became Jackson's attorney on March 11, 2016. Ultimately, the case resolved on the trial date with a no contest plea by Jackson. (71). Trial Counsel was Jackson's attorney at the time that Jackson entered a plea of no contest plea to 2nd Degree Reckless Homicide in violation of Wis. Stat. §940.06(1). (71).

On September 13, 2019, the circuit court conducted a postconviction *Machner*[1] hearing. (78). On November 15, 2019, the circuit court denied Jackson's postconviction claims. (52). Jackson now brings this appeal.

STATEMENT OF THE FACTS

The facts of this case stem from the shooting death of M.C. on December 11, 2014, around 11 p.m. in Racine County. T.M. witnessed the shooting and described the suspects as:

"Suspect 1 was a short heavy set, light skinned male black with a light gray hoodie and gray sweatpants. Suspect 2 was also a male black, slightly taller and thinner than suspect one and wearing all black and black hat." (46:20-21)

As result of law enforcement's investigation into the shooting of M.C., law enforcement officers arrested Bobby Henderson ("Henderson"), Travenn Webster ("Webster") and Jackson. Important to note is that the appearance of Henderson and Webster on the night of the shooting matched the description that T.M. provided of the suspects. (46:11).

After being arrested, Henderson, Webster and Jackson all gave statements to law enforcement. In their statements, both Henderson and Webster were not immediately forth coming with law enforcements officers, but then implicated Jackson as the person that shot M.C. Jackson denied that he shot M.C. and told law enforcement that he was just watching out. (1:3)

The State charged all three charged with crimes related to the shooting of M.C.[2] Henderson and Webster resolved their cases with guilty pleas and agreed to testify against Jackson. Henderson plead no contest to 2nd degree reckless homicide and received a sentence of 12 years initial confinement followed by eight years of extended supervision. Webster plead guilty to

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[1] State v. *Machner*, 101 Wis. 2d 79 (Wis. 1981)

[2] Racine County Case Number 2014CF001719 - State of Wisconsin vs. Bobby G. Henderson; Racine County Case Number 2014CF001720 - State of Wisconsin vs. Travenn L. Webster

robbery and received a sentence of 10 years initial confinement followed by five years of extended supervision.

Facts Related to Scott F. Anderson's Representation of Mr. Jackson

On March 11, 2016**,** Trial Counsel was appointed to represent Jackson. Jackson requested a jury trial and the case was scheduled for trial on November 1, 2016. (69).

From March 11, 2016 to October 31, 2016 – the day before the scheduled jury trial – Trial Counsel met with Jackson in person just two times. (78:27). Trial Counsel met with Jackson on April 25, 2016 and on August 8, 2016. (46:28, 30).

Jackson complained of Trial Counsel's ineffective representation to the circuit court in a motion to have Trial Counsel withdraw from the case. (24). The court took up Jackson's motion at the final pretrial hearing. The following exchange took place on the record.

"THE COURT: Mr. Jackson, are you – Von Jackson, are you asking that Atty. Anderson withdraw?

THE DEFENDANT: Yes.

THE COURT: Why is that?

THE DEFENDANT: Because he hasn't – he doesn't keep in contact with me. He hasn't been properly representing me at all. He hasn't filed any motions on my behalf that I asked him about. He hasn't done anything for me.

THE COURT: Well, just because you ask Atty. Anderson to file motions, doesn't mean that he will or should.

THE DEFENDANT: But if he says he –

THE COURT: Stop. Please don't interrupt me when I'm speaking. That's my one rule. I give you the courtesy of listening, I expect the same of you. This is a case that is over two years old. You have had a number of other attorneys representing you. I can see that Mr. Hart represented you. This has been scheduled for trial many times. The information was filed back on January 22nd of 2015. I will not allow Atty. Anderson to withdraw, whether it be on your request or anyone else's. So, Atty. Anderson, I ask that you meet with Mr. Von Jackson and that you also be prepared to proceed on November 1st. Again it is the number one trial."

(70:2-4)

Trial Counsel did not meet with Jackson before the trial date as asked to by the court. (78:27) At the *Machner* hearing, Trial Counsel agreed that he should have met with Jackson prior to the jury trial to provide sufficient representation. (78:28).

At the time of the jury trial date both the State and Trial Counsel knew that Jackson had filed a grievance against Trial Counsel with the Office of Lawyer Regulation. (46:32). Additionally, prior to the trial date Trial Counsel notified the State that he intended to withdraw due to Jackson's grievance. (46:32).

On the day of trial Jackson plead no contest and later testified that, "I didn't have a choice. Proceed to trial that day with Mr. Anderson, which was trial with a lawyer who wasn't prepared to go to trial or take the plea. I decided that I had to take the plea." (78:83).

The relationship between Jackson and Trial Counsel was so fraught that even the State was concerned. At the plea hearing the State requested the court to reconfirm that Jackson was not as the State put it, "rushed or in any way, I want to say pushed, but in any way rushed I guess is a good word, on entering this plea" (71:13).

The court asked Jackson to reconfirm that he was satisfied with Trial Counsel's representation. (71:13-14). Jackson responded with, "I guess, yes." (71:14).

After the plea hearing, Trial Counsel filed a motion to withdraw, citing Jackson's grievance against Trial Counsel filed with the Office of Lawyer Regulation. (29). The court granted the motion. Jackson's case proceeded to sentencing with new counsel and the court sentenced Jackson to 20 years initial confinement followed by 10 years of extended supervision. (33).

Jackson brought a postconviction claiming ineffective assistance of counsel and that the circuit court erroneously denied Jackson's motion to have Trial Counsel withdraw as counsel. (46). The circuit court conducted a *Machner* hearing. (78). The circuit court denied Jackson's ineffective

assistance of counsel claim, finding that Jackson's counsel performed deficiently, but that the deficient performance did not prejudice Jackson. (52:34). The circuit court also denied Jackson's claim related to Jackson's motion to have Trial Counsel withdrawal, finding that the circuit court acted with appropriate discretion in denying the request. (52:34). Jackson now appeals.

ARGUMENT

I. JACKSON WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL WHEN JACKSON'S TRIAL COUNSEL FAILED TO CONFER WITH JACKSON PRIOR TO JACKSON'S TRIAL.

A. INTRODUCTION AND STANDARD OF REVIEW.

A defendant is entitled to withdraw a guilty plea after sentencing only upon a showing of "manifest injustice" by clear and convincing evidence. *State v. Bentley*, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996). A defendant meets the "manifest injustice" test if the defendant was denied the effective assistance of counsel. *Bentley*, 201 Wis. 2d at 311.

Jackson must satisfy a two-prong test for an ineffective assistance of counsel claim. *Strickland v. Washington*, 466 U.S. 668 (1984). First, Jackson must show that counsel's performance was deficient. *Id*. Second, Jackson must show that his attorney's deficiency was prejudicial. *Id*. at 687.

Appellate courts review questions of constitutional fact independent of a circuit court's determination. *State v. Bangert*, 131 Wis. 2d 246, 283, 389 N.W.2d 12 (1986). However, on appeal the appellate court will not upset the circuit court's findings of evidentiary or historical facts unless those findings are contrary to the great weight and clear preponderance of the evidence. *State v. Phillips*, 218 Wis. 2d 180, 190; 577 N.W.2d 794 (1998). This standard of review does not apply to the circuit court's determination of constitutional questions; rather, the appellate court independently determines questions of constitutional fact. *Id* at 190.

B. TRIAL COUNSEL'S PERFORMANCE WAS DEFICIENT BECAUSE TRIAL COUNSEL FAILED TO MEET AND CONFER WITH JACKSON.

The circuit court correctly found that the performance of Jackson's trial counsel was deficient because trial counsel failed to meet and confer with Jackson prior to trial. (52:34), SCR 20:1.4,5.

To prove deficient performance, Jackson must establish that his counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed to the defendant by the Sixth Amendment. *Strickland*, 466 U.S. at 687. Judicial scrutiny of an attorney's performance is highly deferential. *Strickland*, 466 U.S. at 689. Jackson's trial counsel owed Jackson the duty to "bring to bear such skill and knowledge as will render the trial [or proceeding] a reliable adversarial testing process." *Strickland* , 466 U.S. at 688.

The court must determine whether, under all the circumstances, counsel's conduct was outside the wide range of professionally competent assistance. *Strickland*, 466 U.S. at 690. The deficiency prong of the *Strickland* test is satisfied when Jackson's trial counsel's performance was the result of oversight rather than a reasoned defense strategy. See *State v. Moffett*, 147 Wis. 2d 343, 353, 433 N.W.2d 572 (1989).

Here, Trial Counsel's conduct was outside the wide range of professionally competent assistance. Trial counsel represented Jackson for over seven months before the trial date and during that time trial counsel only met with Jackson two times. The last time Trial Counsel met with Jackson prior to the November 1, 2016, trial date was August 8, 2016. (46:28, 30). No other substantive conferences between Jackson and Trial Counsel exist. At the *Machner* hearing, Trial Counsel conceded that he could have done better in his representation of Jackson.

In this case Jackson did not sit passively on his hands while his attorney ignored him. On the contrary, Jackson repeatedly requested that Trial Counsel contact him, with no response from Trial Counsel. Jackson complained to the court of Trial Counsel's lack of communication. Jackson even contacted the State to directly negotiate a resolution. Additionally, Trial

Counsel was aware of Jackson's efforts to communicate with Trial Counsel; yet Trial Counsel ignored Jackson.

Here, because Trial Counsel did not function as "counsel" guaranteed to the defendant by the Sixth Amendment, the circuit court correctly concluded that Trial Counsel's performance was deficient.

C. TRIAL COUNSEL'S DEFICIENT PERFORMANCE PREJUDICED JACKSON INTO PLEADING GUILTY TO A CRIME HE DID NOT COMMIT.

Because of the deficient performance of Trial Counsel, Jackson plead to 2nd degree reckless homicide as a principal and was sentenced as such even though the facts of this case do not support Jackson's no contest plea.

The court noted "In this case the record was explicit that the defendant [Jackson] was pleading as a principal rather than an accomplice or conspirator." (52:16).

The sentencing court also stated,

> "I fully believe based on everything that I have read that you were the shooter in this case or involved in this shooting... Having considered now your record and your involvement in this case and the factors that I am required to consider, I am sentencing you to a total of 30 years in prison bifurcated 20 years of initial confinement and 10 years of extended supervision."

(75:23)

To succeed on his ineffective assistance of counsel claim, Jackson must show that his trial counsel's deficiency was prejudicial. *Strickland*, 466 U.S. at 687. In order to satisfy the prejudice prong of the *Strickland* test, Jackson must allege facts to show "that 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." *Bentley*, 201 Wis. 2d at 312. "The result of a proceeding can be rendered unreliable, and hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome." *Strickland*, 466 U.S. at 694.

The evidence in this case shows that Jackson was not the principal in the shooting death of M.C.; rather, the evidence shows that Henderson and Webster were the ones directly involved and fled on foot after the shooting. (46). This based on (i) an eyewitness who described the actors who fled on foot and that description matching the appearance of Henderson and Webster on the night in question (ii) physical evidence (fingerprints and DNA) linked Henderson to the shooting (iii) both Henderson and Webster admitted to their involvement in the shooting, but conveniently told law enforcement that Jackson was the shooter. (46:11)

Based on this, the question is why did Jackson plead to the charge when he did not shoot M.C.?

Jackson answered this by stating, "I didn't have a choice. Proceed to trial that day with Mr. Anderson, which was trial with a lawyer who wasn't prepared to go to trial or take the plea. I decided that I had to take the plea."

The circuit court answered this question with the following:

> "MR. MATHERS: the question is why one pleads guilty to something when they are not guilty.
>
> THE COURT: Happens all the time. People are anxious to avoid risk, and so they take half a loaf as opposed to the whole.
>
> MR. MATHERS: I hope people don't plead guilty to things that they are not guilty of. I guess, I have a different view.
>
> THE COURT: You sit through stuff, sentencings, you will hear plenty of people say I know I pled guilty but I am not guilty. I didn't want to take the chance.
>
> MR. MATHERS: I guess.
>
> THE COURT: A weekly occurrence."

(78:69)

Here the circuit court essentially voids Jackson's prejudice claim by citing that because Jackson received some benefit – less exposure to prison time – Trial Counsel's performance did not prejudice Jackson.

To parry the argument that Trial Counsel's performance prejudiced Jackson, the State will advance a form of the circuit court's reasoning - i.e. - that Jackson's decision to plead no contest was based on the benefits he received in accepting the plea and on the strength of the case against him, so therefore, there is no prejudice to Jackson.

However, there are two problems with this argument. First, the benefits a defendant receives from resolving his case short of trial presupposes that the defendant has counsel who he has conferred with and been advised by. Here, Jackson's counsel ignored Jackson's request to meet and only met with his counsel twice before the day of trial, the last meeting being 10 weeks before the trial. Trial Counsel's behavior caused Jackson to not trust Trial Counsel.

The argument that Jackson received some benefit, so therefore, there was no prejudice oversimplifies the prejudice analysis. Of course, Jackson received some benefit from his plea deal, that is the nature of plea deals.

A close look reveals that Trial Counsel's representation forced Jackson into the predicament where he had to proceed to trial with an attorney who broke the attorney client relationship or plead guilty. The reduced exposure Jackson received is an illusion for two reasons. First, the reduced exposure was forced on to Jackson because the court was clear that on November 1, 2016, the case would be resolved with a trial or guilty plea, and Jackson did not trust Trial Counsel. Second, it is clear that the reduced exposure is not actually a benefit when compared to Jackson receiving adequate representation where counsel demonstrates to the court and potentially a jury that Jackson did not shoot M.C. In this scenario Jackson may be acquitted and most certainly would receive a sentence less harsh than the sentences the two principals received.

This gets to the second problem with the State's potential argument. The strength the case against Jackson is not strong, specifically as it relates to charge that Jackson plead to, 2nd degree reckless homicide. This is based on the above review of the facts, which undermine the confidence this Court should have in the proceedings.

The case against Jackson is based on the statements of Henderson and Webster, who describe Jackson as the shooter. However, these statements

are contradicted by the eye-witnesses report. Additionally, as both Henderson and Webster were directly implicated in the shooting, their statement are self-serving to place the blame of the shooting on to someone else.

Jackson denied to law enforcement officers that he shot M.C. and told law enforcement officers that he was just watching out. Jackson told the PSI writer and testified that he was waiting for Henderson and Webster to purchase narcotics. (78:67).

Here, Trial Counsel disregarded Jackson to such a point that Trial Counsel's performance was deficient and broke their attorney-client relationship.

Because of Trial Counsel's deficient performance, Jackson plead no contest to a crime he did not commit and received a sentence more severe than the sentences that the two actors responsible for the shooting death of M.C. received. Based on this, the proceeding is unreliable and unfair, and thus, Jackson satisfies prejudice prong.

Based on the above, this Court should find that Jackson satisfied his ineffective assistance of counsel claim and vacate the Jackson's no contest plea and order a new trial.

II. THE COURT ERRONEOUSLY DENIED JACKSON'S REQUEST TO HAVE ATTY. TRIAL COUNSEL WITHDRAW AS COUNSEL; THEREFORE, THE COURT SHOULD WITHDRAW MR. JACKSON'S NO CONTEST PLEA.

Here, Jackson motioned the court to have Trial Counsel withdraw. The court took up the motion with the following put on the record.

> "THE COURT: Mr. Jackson, are you – Von Jackson, are you asking that Atty. Anderson withdraw?
>
> THE DEFENDANT: Yes.
>
> THE COURT: Why is that?

> THE DEFENDANT: Because he hasn't – he doesn't keep in contact with me. He hasn't been properly representing me at all. He hasn't filed any motions on my behalf that I asked him about. He hasn't done anything for me.
>
> THE COURT: Well, just because you ask Atty. Anderson to file motions, doesn't mean that he will or should.
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> THE DEFENDANT: But if he says he –
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> THE COURT: Stop. Please don't interrupt me when I'm speaking. That's my one rule. I give you the courtesy of listening, I expect the same of you. This is a case that is over two years old. You have had a number of other attorneys representing you. I can see that Mr. Hart represented you. This has been scheduled for trial many times. The information was filed back on January 22nd of 2015. I will not allow Atty. Anderson to withdraw, whether it be on your request or anyone else's. So, Atty. Anderson, I ask that you meet with Mr. Von Jackson and that you also be prepared to proceed on November 1st. Again it is the number one trial."

(70:2-4).

The circuit court reviewed the court's decision to deny Jackson's withdrawal motion and found the circuit court did not abuse its discretion in denying the motion.

"In evaluating whether a trial court's denial of a motion for substitution of counsel is an abuse of discretion, a reviewing court must consider a number of factors including: (1) the adequacy of the court's inquiry into the defendant's complaint; (2) the timeliness of the motion; and (3) whether the alleged conflict between the defendant and the attorney was so great that it likely resulted in a total lack of communication that prevented an adequate defense and frustrated a fair presentation of the case. *State v. Lomax*, 146 Wis. 2d 356, 359, 432 NW 2d 89 (Wis. 1988).

A trial court's findings of fact will be upheld unless clearly erroneous. *State v. Broomfield*, 223 Wis.2d 465, 481, 589 N.W.2d 225 (1999). Whether the facts amount to prejudice requiring a new trial is a matter of law. *Id*. at 480. However, the decision to grant or deny a new trial generally lies within the discretion of the trial court. *State v. Wyss*, 124 Wis.2d 681, 717-18, 370 N.W.2d 745 (1985). Nonetheless, an exercise of discretion based on an

erroneous application of the law is an erroneous exercise of discretion. *State v. Martinez*, 150 Wis.2d 62, 71, 440 N.W.2d 783 (1989).

Here, the court focused on Jackson's complaint that Trial Counsel did not file motions. The court did not examine Jackson's complaint that Trial Counsel did not "keep in contact." Had the court further examined Trial Counsel's lack of contact with Jackson, the court would have concluded that the "performance was poor" and fell "well below professional standards", as determined by the court after the *Machner* hearing.

The court found that Jackson's complaints of Trial Counsel were vague, that Jackson made similar complaints about all of his previous attorneys, that the attorneys were ready for trial, and that Jackson had delayed the case previously by terminating his attorneys. (:)

However, the basis for the court's ruling is not founded on the facts of this case, and thus, made in error. True, Jackson's first attorney withdrew because of a breakdown in communication. However, Jackson's second and third attorneys were allowed to withdraw for different reasons.

Jackson's second attorney averred that she, "developed a very antagonist relationship with the mother of Mr. Jackson. This antagonistic relationship has caused the attorney-client relationship with Mr. Jackson to deteriorate. Our attorney-client relationship is now irretrievably broken." (10). Based on this the court allowed the second attorney to withdraw. (61).

Jackson's third attorney withdrew because he suffered a leg injury. (66).

Additionally, Jackson requested that Trial Counsel withdraw 40 days before the scheduled trial date. (24). The State's witnesses who would identify Jackson as the shooter were in custody, so the State would not have been inconvenienced by the request.

The *Lomax* factors permit the reviewing court to balance Jackson's constitutional right to counsel against society's interest in the prompt and efficient administration of justice. *Lomax*, 146 Wis. 2d 356, 360 (Wis. 1988).

In looking at the *Lomax* factors at the time of Jackson's request for new counsel it is clear that the conflict between the Jackson and Trial

Counsel was so great that it resulted in a total lack of communication that prevented an adequate defense. The other *Lomax* factors do not move the balance against Jackson's right to counsel.

In denying Jackson's motion to have Trial Counsel withdraw, the circuit court based its reasoning on inaccurate facts. Therefore, the court's determination was in error and upon review Jackson should have been permitted to have Trial Counsel withdraw. Thus, this court should vacate Jackson's no contest plea and order a new trial.

III. IN THE INTEREST OF JUSTICE THE COURT SHOULD VACATE JACKSON'S GUILTY PLEA OR IN THE ALTERNATE ORDER THE RE-SENTENCING OF JACKSON BECAUSE THE FACTS OF THIS CASE DO NOT SUPPORT THAT JACKSON SHOT M.C.

A. STANDARD OF REVIEW.

This Court has broad power of discretionary reversal. *Vollmer v. Luety*, 156 Wis.2d 1, 19, 456 N.W.2d 797 (1990).

"If it appears from the record that ... it is probable that justice has for any reason miscarried, the court may reverse the judgment or order appealed from, regardless of whether the proper motion or objection appears in the record and may direct the entry of the proper judgment or remit the case to the trial court for entry of the proper judgment or for a new trial, and direct the making of such amendments in the pleadings and the adoption of such procedure in that court, not inconsistent with statutes or rules, as are necessary to accomplish the ends of justice."

Wis. Stat. § 752.35

B. THE MISCARRIAGE OF JUSTICE IN JACKSON'S CASES REQUIRES THE REVERSAL OF THE JUDGMENT OF CONVICTIONS OR IN THE ALTERNATE A NEW SENTENCING.

The interest of justice requires that Jackson's guilty plea be withdrawn and a new trial ordered because the facts of this case do not support Jackson's conviction in violation of Jackson's fundamental right to due process and

justice has been miscarried. U.S. Const. amend. V; U.S. Const. amend. XIV. § 1. "Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." *California v. Trombetta*, 467 U.S. 479, 485 (1984)

The errors in the process of Jackson's cases created a miscarriage of justice that requires this Court to reverse the judgments of conviction. This claim is based on the previous analysis of the application of the facts that were applied to the charge Jackson plead guilty to.

Jackson brings this claim in addition to the ineffective assistance of counsel claim because Jackson's guilty plea was supported by facts and the errors of Jackson's attorney that rendered the process fundamentally unfair to Jackson.

Wisconsin has recognized that the prosecution and defense possess relatively equal bargaining power in the give-and-take negotiation common in plea-bargaining. *State v. Johnson*, 2000 WI 12, ¶ 25, 232 Wis.2d 679, 605 N.W.2d 846. This was not present in the prosecution of Jackson's cases because of the conduct of Jackson's trial attorney. Trial Counsel abandoned Jackson and only provided superficial representation. As a result of this Jackson was forced to act as his own counsel when he contacted the State to discuss his case.

From start to finish, Trial Counsel's representation of Jackson was fundamentally unfair to Jackson. Trial Counsel's representation left Jackson in the dark as to how the defense would proceed at trial.

The errors here lead to Jackson pleading guilty and being sentenced as though he were the principal in a shooting, even though the facts show that at most Jackson was a look out.

The errors infected the plea negotiations, Jackson's discussions with his trial counsel and the plea hearing. Therefore, to redress the due process violations that resulted from the Jackson's case this Court should vacate his guilty pleas and vacate the judgments of conviction and order a new trial to cure the constitutional errors.

CONCLUSION

Based on the reasons set forth within this brief Defendant-Appellant, Daimon V. Jackson, respectfully requests the Court to vacate the guilty plea, vacate the judgment of conviction and order a new trial.

Dated this 6th day of October, 2020.

Respectfully submitted,

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CERTIFICATION AS TO FORM/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 4,496 words.

Dated this 6th day of October, 2020.

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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 6th day of October, 2020.

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A P P E N D I X

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CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 6th day of October, 2020.

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