

FILED
07-31-2024
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2024AP000115-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.
LYNETTA LAKE,
Defendant-Appellant.

ON APPEAL FROM THE MILWAUKEE COUNTY
CIRCUIT COURT CASE NUMBER 2021CF003408 THE
HONORABLE KORI ASHLEY PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

John Chisholm
District Attorney
Milwaukee County

William R.F. Ackell
Assistant District Attorney
State Bar No. 1091271
Attorneys for Plaintiff-Appellant

Milwaukee District Attorney's Office
821 West State Street, Room 405
Milwaukee, WI 53233-1485
(414) 278-4646

TABLE OF CONTENTS

| | Page |
|---|------|
| ISSUES PRESENTED | 1 |
| STATEMENT ON ORAL ARGUMENT AND PUBLICATION | 1 |
| STATEMENT OF THE CASE | 2 |
| STANDARD OF REVIEW | 3 |
| ARGUMENT | 3 |
| A. Lake’s Rule 809.30 Postconviction Motion Failed to Allege Sufficient Facts that, If True, Would Have Constituted Ineffective Assistance of Counsel | 3 |
| CONCLUSION | 5 |

TABLE OF AUTHORITIES**CASES CITED**

| | Page |
|--|-------------|
| <i>State v. Dalton</i> , 2018 WI 85 383 Wis. 2d 147, 914 N.W.2d 120..... | 3 |
| <i>State v. Mull</i> , 2023 WI 26 406 Wis. 2d 491, 987 N.W.2d 707..... | 3 |
| <i>State v. Ruffin</i> , 2022 WI 34, 401 Wis. 2d 619, 974 N.W.2d 432..... | 3 |

WISCONSIN STATUTES CITED

| | |
|--|---------|
| Wis. Stat. § 346.67(1)..... | 2 |
| Wis. Stat. § 809.19 (8) (b) and (c)..... | 6 |
| Wis. Stat. § 906.02 | 4 |
| Wis. Stat. § 941.01 | 2 |
| Wis. Stat. (Rule) 809.22(1)(b)..... | 1 |
| Wis. Stat. (Rule) 809.23(1)(b)4..... | 2 |
| Wis. Stat. Rule 809.30..... | 1, 2, 3 |

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2024AP000115-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

LYNETTA LAKE,

Defendant-Appellant.

ON APPEAL FROM THE MILWAUKEE COUNTY
CIRCUIT COURT CASE NUMBER 2021CF003408 THE
HONORABLE KORI ASHLEY PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

ISSUES PRESENTED

Did Lake's Rule 809.30 Postconviction Motion allege sufficient facts that, if true, would have constituted ineffective assistance of counsel?

Did the trial court erroneously exercise its discretion in denying Lake's Rule 809.30 Postconviction Motion without a hearing?

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to

be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

On August 10, 2021, Officer Steve Krejci of the Milwaukee Police Department received a report from GJ that Lake had crashed into her car. (R. 2:1). Officer Krejci began writing a crash report, and, while he was doing this, Lake again drove her car into GJ's car while GJ was in the car, and drove off from the scene. *Id.* at 1-2. The State filed criminal charges on August 11, 2021, clearly denoting that GJ's car, which was struck twice by Ms. Lake, was a "Mercedes sedan." *Id.*

Lake pleaded guilty to an amended count of Negligent Operation of a Motor Vehicle, contrary to Wis. Stat. § 941.01, and Hit and Run, contrary to Wis. Stat. § 346.67(1), and was found guilty on October 26, 2023. (R. 36:1; R. 43:1; R. 44:1; R. 52:25-27). The Court held a restitution hearing on June 28, 2023, wherein it took testimony from both GJ and Lake. (R. 47). After hearing testimony from both, the court found GJ more credible and ordered restitution in the amount of \$4,047.72. (R. 47:38-40).

On October 23, 2023, Ms. Lake submitted a Rule 809.30 postconviction motion alleging ineffective assistance of counsel at the restitution hearing, attaching two handwritten notarized statements by Griffin Lake, Jr. (who identified Lake as his sister) and Glen D. Winstead. (R. 53). The wording of each statement is as follows:

"The vehicle [GHJ] was driving on the day of the accident was white. My sister struck a white large size sedan. The vehicle she presented before the courts is her husbands vehicle. Griffin Lake Jr." (R. 53:7).

"My name is Glen D. Winstead. To Milwaukee County Courts + whomever concern, regarding the vehicle in question is not [GHJ] vehicle. The vehicle that was presented before the courts is her husband car, and not involved in the accident. Her car was white. I know [GHJ] personally because I resided a short time with her." (R. 53:8).

Both statements were dated April 24, 2023. (R. 53:7-8).

The Court denied the postconviction motion without a hearing, ruling that the statements proffered from Griffin Lake, Jr. and Winstead were “conclusory and insufficient for the court to meaningfully assess whether their testimony would have been reasonably probable to change the outcome of the restitution hearing.” (R. 63:2).

STANDARD OF REVIEW

Whether a postconviction motion alleges sufficient material facts that, if true, would entitle the defendant to relief is a question the Court reviews independently. *State v. Ruffin*, 2022 WI 34, ¶ 27, 401 Wis.2d 619, 974 N.W.2d 432.

The same standard of review is used to determine if the record conclusively demonstrates the defendant is not entitled to relief. *Id.*

If the record demonstrates that the defendant is not entitled to relief, if the Court finds that the postconviction motion does not raise sufficient facts to entitle the defendant to relief, or if it only raises conclusory allegations, then the Court reviews the decision to deny the motion without a hearing under an erroneous exercise of discretion standard. *Id.* at ¶ 28. An exercise of discretion is only erroneous if it is based off of an error in law or fact. *Id.*

A claim of ineffective assistance of counsel presents a mixed question of law and fact. *State v. Mull*, 2023 WI 26 ¶ 31, 406 Wis.2d 491, 987 N.W.2d 707. The Court upholds a trial court’s findings of fact unless they are clearly erroneous. *Id.* Given the facts, whether trial counsel’s performance fell below the constitutional standard is reviewed independently. *Id.*

ARGUMENT

A. Lake’s Rule 809.30 Postconviction Motion Failed to Allege Sufficient Facts that, If True, Would Have Constituted Ineffective Assistance of Counsel

In order to allege sufficient facts to be entitled to a hearing, Ms. Lake needed to demonstrate that 1) trial counsel’s representation was deficient, and 2) the deficiency prejudiced her. *State v.*

Dalton, 2018 WI 85, ¶32, 383 Wis.2d 147, 914 N.W.2d 120. Although a failure at either prong would mean Ms. Lake is not entitled to a hearing, her postconviction motion failed both prongs.

Lake's postconviction motion rested upon the failure of trial counsel to call two people as witnesses: Griffin Lake, Jr. and Glen D. Winstead. (R. 53). The postconviction motion included handwritten, notarized statements from both people. *Id.* What is notable, though, is what is left out: Neither claimed to have personally witnessed the accident.

"A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Wis. Stat. § 906.02. Neither written statement alleged that they saw, heard, or otherwise observed the accident on the day in question.

Further, these statements were both written almost two years after the actual traffic collision. (R. 53:7-8). Neither was able to name a make or model of the car, only the color. Neither was able to note the damage done to the white car.

The trial court already heard similar testimony by Lake at the restitution hearing. (R. 47). The trial court already found Lake's testimony incredible due to its lack of detail when compared to the detailed recollections of GHJ (R. 47:38-40). As the court ruled in its decision denying the postconviction motion, the proffered statements were conclusory and insufficient to allow the court to meaningfully assess whether they would have changed the outcome of the restitution hearing. (R. 63:2).

Thus, Ms. Lake failed both prongs. First, it is not ineffective assistance of counsel to call somebody as a witness who, under Wis. Stat. § 906.02, has not demonstrated any basis of personal knowledge of the actual accident. If a person is not a witness, an attorney cannot be ineffective for not calling him or her as a witness.

Lake fails the second prong because, even if trial counsel had called both people as witnesses in the restitution hearing, their written statements do not evince any personal knowledge or specificity in what happened. It is just more of the conclusory

and confusing lack of detail that the trial court already heard from Lake, as compared to the credible testimony of GHJ.

Because the postconviction motion failed to allege sufficient facts to entitle Lake to a hearing, this Court reviews the decision to not hold a hearing under an erroneous exercise of discretion standard. As the trial court issued a written decision clearly delineating the facts and law it was relying on, and Lake did not allege any of those facts or law as erroneous, this Court should find that the trial court was within its discretion to deny Lake a hearing.

CONCLUSION

For the above reasons, the State respectfully requests this Court deny Lake's appeal.

Dated this 31st day of July, 2024.

Respectfully submitted,

JOHN CHISHOLM, District Attorney
Milwaukee County

Electronically signed by:

William R.F. Ackell.
WILLIAM R.F. ACKELL
Assistant District Attorney
State Bar No. 1091271

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 1,668.

Dated this 31st day of July, 2024.

Electronically signed by:

William R.F. Ackell .
WILLIAM R.F. ACKELL
Assistant District Attorney
State Bar No. 1091271

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 31st day of July, 2024.

Electronically signed by:

William R.F. Ackell .
WILLIAM R.F. ACKELL
Assistant District Attorney
State Bar No. 1091271

P.O. Address:

Milwaukee County District Attorney's Office
821 West State Street- Room 405
Milwaukee, Wisconsin 53233-1485
(414) 278-4646
Attorneys for Plaintiff-Respondent.