

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 29, 2004

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-3383-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00CF000459

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FELICIANO T. DOUGLAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: DANIEL T. DILLON, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Feliciano Douglas appeals a judgment convicting him of possessing cocaine with intent to deliver, as a second or subsequent offense. He also appeals an order denying postconviction relief. The issue is whether Douglas received effective assistance of counsel during his trial. We affirm.

¶2 A police informant bought drugs from a man calling himself “Dude.” The transaction was recorded. Douglas was arrested and charged after the informant identified Douglas as the other party to the transaction.

¶3 At trial, Janesville Police Detective Todd Bailey testified that he listened to the tape of the transaction and recognized Douglas’s voice. The examination of Detective Bailey continued as follows:

Q So you know Feliciano Douglas?

A Yes.

Q How is it you know him?

A I have had numerous contacts with him in the past, back when I worked for the Sheriff’s Department in the jail, and also while working for the Janesville Police Department on patrol.

Q Let’s start with the jail then. Do you recall what time period we are talking about when you would have been in contact with him at the jail?

A Approximately 1992, ’94.

Q Now, the time period we are talking about, how long is that? Is it a day, or more than that?

A I used to work in the Huber portion ... well, of the jail, and Mr. Douglas resided there for, I don’t know how long, but I would talk to him on a daily basis.

....

Q All right. And after you and he left the jail, ... when did you see him again?

A Well, approximately four years ago.

Q And under what circumstances?

A Well, I think the last contact I had with Mr. Douglas, I ended up transporting him to the Rock County Jail.

Q And did you two speak on that occasion?

A Yes.

Q And did you have any contact with him at any time after that, but prior to January 14th [the date of the transaction]?

A No, I don't believe so.

Douglas's attorney did not object to this line of questioning.

¶4 Later, defense counsel called as a witness Beloit Police Detective Craig Johnson. Johnson testified that he knew Douglas for “[m]any years” but never heard him called “Dude.” On cross-examination, the following exchange occurred:

Q Mr. Johnson, how is it that you know Feliciano Douglas?

A I have dealt with Mr. Douglas as part of my job as a Beloit police officer.

Q And how many contacts with him would you say you have had over the many years you have known him?

A I couldn't give you an exact number – numerous times.

Q More than a dozen?

A I can't give you an exact – because I don't know.

Q Okay. Fine. And in what context did these contacts occur?

A While I was investigating crimes.

Q Okay. Why specifically would you contact him?

A If his name came up in an investigation that we were working on.

¶5 Following the jury's verdict and his conviction, Douglas sought postconviction relief alleging ineffective assistance of trial counsel. Counsel's alleged ineffectiveness consisted of her failure to object to the quoted testimony of Detective Bailey, which Douglas contends was inadmissible other acts evidence, and her choice of Detective Johnson as a defense witness. As to the latter, Douglas asserted that other witnesses could have provided exculpatory testimony on the nickname "Dude," without the subsequent testimony on Douglas's involvement in prior criminal investigations. The trial court denied relief, resulting in this appeal.

¶6 To prove ineffective assistance of counsel, the defendant must show that counsel's performance was deficient and that counsel's errors or omissions prejudiced the defense. *State v. Pitsch*, 124 Wis. 2d 628, 633, 369 N.W.2d 711 (1985). Deficient performance falls outside the range of professionally competent representation, and this court measures it by the objective standard of what a reasonably prudent attorney would do in similar circumstances. *See id.* at 636-37. Prejudice results when there is a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different. *Id.* at 642. There is a strong presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Id.* at 637. Whether counsel's performance was deficient and whether it was prejudicial to the defendant are questions of law. *Id.* at 634.

¶7 A reasonably prudent lawyer need not have objected to Detective Bailey's recitation of his contacts with Douglas. Detective Bailey testified that he knew Douglas well enough from numerous contacts to recognize Douglas's taped voice. A reasonable jury would have drawn the unavoidable inference that Bailey's knowledge came from multiple law enforcement contacts with Douglas.

The follow-up testimony, therefore, was not “incredibly damaging,” as Douglas puts it. Rather, that testimony merely provided fairly innocuous details on what the jury would have inevitably surmised anyway: that “numerous contacts” with a police officer means Douglas must have had some involvement in criminal activity or criminal investigations.

¶8 We conclude that a reasonably prudent lawyer could have used Detective Johnson as a witness. Douglas contends that three former girlfriends were available to testify that Douglas did not have the nickname “Dude,” rendering Johnson’s testimony unnecessarily prejudicial. Two were mothers of Douglas’s children. A reasonable lawyer could have determined that Detective Johnson had far more credibility than the three women, at least two of whom had a seemingly strong motive to see Douglas acquitted. The follow-up information as to the nature of Johnson’s acquaintance with Douglas was a reasonable trade-off for this witness’s greater credibility.

¶9 Douglas’s argument on appeal relies in part on counsel’s testimony that counsel did not have strategic reasons for her trial court decisions regarding Detectives Bailey and Johnson. As noted, we apply an objective standard of review to evaluate counsel’s performance. *See Pitsch*, 124 Wis. 2d at 636-37. Consequently, counsel’s subjective reasons for her decisions are not determinative. Additionally, Douglas points to flaws in the trial court’s decision on his postconviction motion. However, our review is *de novo*, *id.* at 634, and we independently conclude that Douglas has failed to demonstrate ineffective assistance of counsel.

By the Court.—Judgment and order affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.

