COURT OF APPEALS
DECISION
DATED AND FILED

October 18, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP1541-CR **Cir. Ct. No. 2012CF2524**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMIE DEAN MOORE, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed*.

Before Kessler and Brash, JJ., and Daniel L. LaRocque, Reserve Judge.

¶1 PER CURIAM. Jamie Dean Moore, Jr., appeals from a judgment of conviction and from an order denying a postconviction motion that raised multiple claims of error without a hearing. Moore contends he was at least entitled to an

evidentiary hearing on the motion. We conclude the trial court properly denied the motion without a hearing and we affirm the judgment and order.

BACKGROUND

¶2 On May 13, 2012, after working in her neighbor's backyard, L.M. took a bucket of weeds to the curb for disposal. At the curb, a man approached her and asked for directions. L.M. gave him directions and watched him walk away before she returned to the backyard. In the backyard, L.M. was startled by a noise and saw the man standing directly behind her.

¶3 The man put his arm around L.M.'s neck and began to strangle her. She struggled but lost consciousness. They fell to the ground and L.M. briefly came to before blacking out again. When she woke up, the man was dragging her by the wrist to a more secluded area. He removed her jeans and then her underwear, which he stuffed in her mouth. L.M. struggled to keep her knees together as tightly as she could, but Moore forced her legs apart, then put his penis into her vagina until he ejaculated and fled. L.M. put her pants back on, returned to her house, and asked her teenaged daughter to call the police.

¶4 While driving to the scene, approximately seven minutes after a description of the suspect was broadcast, Officer Guy Frailey spotted a man matching the description. Frailey stopped his car, got out, and approached the man, who turned and fled. Frailey knew the man would be boxed in by the freeway and advised others of where the man was running. Officer Brian Laroque was one of the responding officers. He came across a gravel path that appeared recently disturbed. He followed the path and found Moore hiding in the bushes.

¶5 Moore was charged with, and convicted by a jury on, one count of strangulation and suffocation, one count of kidnapping, and one count of second-degree sexual assault with the use of force, all as a repeater. He was given sentences totaling sixty-five years of imprisonment.

¶6 After his conviction, Moore filed a postconviction motion for a new trial on multiple grounds. The trial court ordered briefing on the motion, as well as a round of supplemental briefing, but ultimately denied the motion without a hearing. Moore appeals. Additional facts will be discussed herein as necessary.

DISCUSSION

I. Standard of Review for Postconviction Motions

¶7 "A hearing on a postconviction motion is required only when the movant states sufficient material facts that, if true, would entitle the defendant to relief." ***State v. Allen***, 2004 WI 106, ¶14, 274 Wis. 2d 568, 682 N.W.2d 433. Whether the motion alleges such facts is a question of law. *See* ***id.***, ¶9. If the motion raises sufficient material facts, the trial court must hold a hearing. *See* ***id.*** If the motion does not raise sufficient material facts, if the motion presents only conclusory allegations, or if the record conclusively shows the defendant is not entitled to relief, then the decision to grant or deny a hearing is left to the trial court's discretion. *See* ***id.***

¶8 The trial court has the discretion to deny "even a properly pled motion … without holding an evidentiary hearing if the record conclusively demonstrates that the defendant is not entitled to relief." *See* ***State v. Sulla***, 2016 WI 46, ¶30, 369 Wis. 2d 225, 880 N.W.2d 659. A trial court's discretionary

decisions are reviewed for an erroneous exercise of that discretion, a deferential standard. *See* ***id.***, ¶23.

II. Moore's Issues

A. The Right to Testify

¶9 Moore opted not to testify at trial. On appeal, he makes two complaints relative to his right to testify. He claims ineffective assistance of trial counsel for failing to properly advise him of the consequences of not testifying, so his waiver of the right to testify was not fully knowing, intelligent, and voluntary. Moore also complains that the trial court failed to engage him in a proper colloquy about waiving his right to testify.

1. Ineffective Assistance of Trial Counsel

¶10 A defendant claiming ineffective assistance of counsel must show that counsel's performance was deficient and that the deficient performance prejudiced the defense. *See* ***State v. Love***, 2005 WI 116, ¶30, 284 Wis. 2d 111, 700 N.W.2d 62; *see also* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To prove deficient performance, the defendant must show counsel's conduct fell below an objective standard of reasonableness. *See* ***Love***, 284 Wis. 2d 111, ¶30. To prove prejudice a defendant must show a reasonable probability that, but for counsel's deficient performance, the result of the proceedings would have been different. *See* ***id.*** "'A reasonable probability is a probability sufficient to undermine confidence in the outcome.'" ***State v. Thiel***, 2003 WI 111, ¶20, 264 Wis. 2d 571, 665 N.W.2d 305 (citation omitted). Whether counsel's performance was deficient or prejudicial is, ultimately, a question of law. *See* ***State v. Erickson***, 227 Wis. 2d 758, 768, 596 N.W.2d 749 (1999).

¶11 Moore claims that trial counsel was ineffective for failing to advise him of the consequences of not testifying at trial, thereby rendering his waiver of the right to testify not knowing, intelligent, or voluntary. Specifically, Moore claims that trial counsel failed to tell him "that only through his testimony would the jury learn that when he was arrested he was wearing jeans and not black sweatpants with a white stripe" as the victim had described. Moore also claims that trial counsel failed to warn him that the jury would be instructed that flight from police could be viewed as consciousness of guilt and to advise him that only through Moore's own testimony would the jury hear "that the reason he hid from the police was because he believed a warrant for his arrest had been issued due to [him] having absconded from a halfway house."

¶12 Moore's arguments are conclusory and otherwise insufficient. First, while Moore asserts that he has a due process right to testify on his own behalf, he does not claim that trial counsel failed to properly advise him of that right or to discuss it generally. Moore also does not identify any authority for his implicit argument that counsel must identify and discuss every conceivable consequence of a defendant's decision not to testify. It further strains credulity to suggest that it would have been objectively reasonable for trial counsel to recommend a defendant open the door to other acts evidence as a means of mitigating the impact of the flight instruction. We are therefore unpersuaded that Moore has demonstrated deficient performance by trial counsel.

¶13 We are even less persuaded that Moore has established prejudice, as was the trial court. Moore has not shown why he was the only person who could have testified what he was wearing upon his arrest; further, Officer Frailey had testified that Moore was wearing black pants that looked like sweatpants, but not actual sweatpants. Also, even if Moore testified about why he fled police, the jury

could still be given the flight instruction. We are not persuaded that it was prejudicial for the jury to miss hearing that Moore thought there was an open arrest warrant for him because he fled supervision. Our confidence in the outcome of the trial is not undermined.[1]

2. Waiver Colloquy

¶14 Moore also complains "that the trial court's colloquy with Moore was not sufficient to ensure that Moore knowingly, voluntarily and intelligently waived his right to testify, in accordance with ***State v. Denson***, 2011 WI 70, 335 Wis. 2d 681, 799 N.W.2d 831." This claim is not supported by the record.

¶15 First, ***Denson*** does not apply. The applicable case is instead ***State v. Weed***, 2003 WI 85, 263 Wis. 2d 434, 666 N.W.2d 485. There, our supreme court held that a defendant's right to testify is a fundamental right, so a trial court "should conduct a colloquy with the defendant in order to ensure that the defendant is knowingly and voluntarily waiving his or her right to testify." *See* ***id.***, ¶40.

¶16 ***Denson*** deals with waiver of the corollary right: the right not to testify—*i.e.*, ***Denson*** applies where a defendant chooses to testify and is waiving the right to remain silent. *See* ***id.***, 335 Wis. 2d 681, ¶63. The ***Denson*** court declined to extend ***Weed***'s colloquy requirements to the waiver of the right not to testify, although the court did recommend such a colloquy "as the better practice." *See* ***Denson***, 335 Wis. 2d 681, ¶¶63, 67.

[1] Additionally, as will be discussed elsewhere in this opinion, we note that there was DNA evidence linking Moore to these crimes.

¶17 Second, Moore asserts the colloquy

> is devoid of any clarification that Moore understood that he had a right [to] testify and if he did he would be subject to cross-examination by the district attorney; there is no assurance that Moore did not feel threatened or coerced into waiving his right to testify; there is no confirmation that Moore had adequate time to discuss waiving his right to testify with his attorney; and, finally the colloquy provides no assurance that Moore understood the right [he] was waiving and had the mental capacity to knowingly and intelligently waive that right.

Moore does not, however, identify any law requiring these inquiries. ***Weed*** specifies that the colloquy on the waiver of the right to testify "should consist of a basic inquiry to ensure that (1) the defendant is aware of his or her right to testify and (2) the defendant has discussed this right with his or her counsel." ***Id.***, 263 Wis. 2d 434, ¶43.

¶18 The colloquy in this case was as follows:

> THE COURT: … [I]t is my understanding that the defendant is not going to be testifying.
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: And have you discussed that with him, counsel?
>
> [DEFENSE COUNSEL]: Yes.
>
> THE COURT: And is that correct, sir, that is a voluntary decision on your part not to testify?
>
> DEFENDANT: Yes, sir.
>
> THE COURT: That is by your choice?
>
> DEFENDANT: Yes, sir.
>
> THE COURT: After discussing it with your lawyer?
>
> DEFENDANT: Yes, sir.
>
> THE COURT: Okay.…

> ….
>
> THE COURT: Okay. So then again it is a correct statement for the court that you're voluntarily, knowingly not taking the witness stand because it is your choice not to; is that correct, after discussing it with your lawyer?
>
> DEFENDANT: Yes, sir.
>
> THE COURT: Okay. Then the court is satisfied.

This colloquy adequately satisfies the dictates of ***Weed***, so we agree with the trial court's conclusion that Moore has not established that the colloquy was defective or that his waiver was anything other than knowing, intelligent, and voluntary.

B. Out-of-Court Identifications

¶19 When police conducted a photo array, L.M. was unable to identify her attacker. The array was subsequently lost and could not be presented at trial. When police conducted a line-up, L.M. was again unable to identify her assailant. There was some discussion between L.M. and the police and, after a second line-up, she identified Moore. In court, she identified him before any testimony was given about these out-of-court identifications.

1. Ineffective Assistance of Counsel

a. Suppression Motion

¶20 Moore asserts that trial counsel was ineffective for failing "to challenge the admissibility of the victim's eyewitness identification of Moore even though the photo array … had been lost" and the line-up "failed to comport with the [Wisconsin] Department of Justice's Model for Eyewitness Identification protocol." The trial court, in denying the motion, questioned the merits of any suppression motion and determined there was no reasonable probability of a

different result even if the officer who testified about the identification processes had his testimony suppressed.

¶21 We share the trial court's skepticism about the merits of a suppression motion. Moore repeatedly assails the out-of-court identification as unreliable. But while "'reliability is the linchpin in determining the admissibility of identification testimony' … in most instances, questions as to reliability of constitutionally admissible eyewitness identification evidence will remain for the jury to answer." ***State v. Hibl***, 2006 WI 52, ¶¶52-53, 290 Wis. 2d 595, 714 N.W.2d 194 (citations omitted). Moore does not adequately develop an argument to explain why his "unreliable" out-of-court identification in this case was anything other than a jury question.

¶22 A defendant does have a due process right to suppress identification evidence that "stems from a pretrial police procedure that is 'so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.'" ***State v. Wolverton***, 193 Wis. 2d 234, 264, 533 N.W.2d 167 (1995) (citation omitted), *abrogated on other grounds by* ***State v. Dubose***, 2005 WI 126, ¶¶27-29, 285 Wis. 2d 143, 699 N.W.2d 582. But Moore does not make any claim that the identification procedures were, in fact, impermissibly suggestive. Thus, any suppression motion would have failed, and counsel is not ineffective for failing to pursue a meritless motion. *See* ***State v. Cummings***, 199 Wis. 2d 721, 747 n.10, 546 N.W.2d 406 (1996).

b. Expert Witness

¶23 Moore also asserts that trial counsel was ineffective for failing to secure an expert witness "that could rebut the validity of eyewitness identification of Moore." This argument is conclusory. Moore has not identified any witness

who would have been called, what the expert's testimony would have been, how it would have rebutted the validity of L.M.'s out-of-court identification of Moore, or why an expert was so critical when it was already known that L.M. twice failed to identify Moore. *See* ***Allen***, 274 Wis. 2d 568, ¶23 (recommending defendants allege "who, what, where, when, why, and how" to provide "the kind of material factual objectivity" one needs for meaningful review of claims). This conclusory argument fails to establish deficient performance by counsel or prejudice from the failure to call an expert witness on identification testimony.

2. Department of Justice Protocol

¶24 Moore also complains that his due process rights were violated by admitting L.M.'s out-of-court identification because the identification process failed to comply with a model procedure promulgated by the Wisconsin Department of Justice. However, Moore does not establish that the Department's protocol is anything more than a recommendation, does not explain how failure to comply with a suggestion amounts to a due process violation, and does not explain why a failure to comply with a suggested procedure goes to the admissibility of identification testimony rather than simply to its weight. We discern no error related to lack of compliance with the Department's recommended protocol.

C. Use of PowerPoint

¶25 During trial, the State presented a PowerPoint slide show. Moore first complains that this was a due process violation because there was no foundation "to ensure the accuracy" of the presentation, Moore "had no opportunity to cross-examine the validity of the power point" and the presentation was permitted without "any evidentiary safeguards or [jury] instructions."

1. Admission of the Presentation Generally

¶26 Exhibits that summarize and organize admitted evidence may qualify as "pedagogical devices" admissible under WIS. STAT. § 906.11(1) (2013-14).[2] *See* ***State v. Olson***, 217 Wis. 2d 730, 739, 579 N.W.2d 802 (Ct. App. 1998).

> The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to do all of the following:
>
> (a) Make the interrogation and presentation effective for the ascertainment of the truth.
>
> (b) Avoid needless consumption of time.
>
> (c) Protect witnesses from harassment or undue embarrassment.

WIS. STAT. § 906.11(1). There is no hard and fast rule regarding the admission of pedagogical devices; rather, such decision is committed to the trial court's discretion. *See* ***Olson***, 217 Wis. 2d at 740.

¶27 When Moore objected[3] to the trial court about the use of the PowerPoint presentation, the State explained that the presentation would "assist in aiding the jury in understanding what is a diagram, particular packet of DNA material. I also think it will save a substantial amount of time in going through that information." The State also explained that the presentation was created based on information already provided during discovery. Based on the State's explanation, the trial court permitted the presentation. Moore does not establish

[2] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

[3] The sole basis for the objection at the time was that defense counsel had not had an opportunity to preview the presentation.

that a cautionary jury instruction is required to accompany such evidence and, as the State's explanation aligns with the objectives of WIS. STAT. § 906.11(1), we discern no erroneous exercise of discretion in allowing the presentation.

2. The State of the Record

¶28 Moore also complains that the transcript for the applicable portion of the jury trial "fails to disclose any references to the power point presentation by the district attorney." Based on this alleged omission, Moore asserts he is entitled to a new trial. Moore also notes that the presentation is not a part of the appellate record.

¶29 First, it is incorrect to say that there is no reference to the presentation by the State in the transcripts. The slides were prepared to help the jury understand the DNA evidence being presented, and the transcript includes at least three references to the presentation during the State's direct examination of the crime lab analyst. To the extent that this argument is actually Moore's claim that the presentation occurred independently of any witness's examination and that the presentation involved only a map, we agree with the trial court that the record is wholly devoid of any evidence to support such a claim.[4]

¶30 In any event, a faulty transcript or record would not automatically entitle Moore to a new trial. *See* ***State v. Perry***, 136 Wis. 2d 92, 100, 401 N.W.2d

[4] With his postconviction motion, Moore included an affidavit from a Gailynn Thomas, claiming there was a thirty or forty minute presentation showing a map of the assault location. This is clearly belied by the record of the analyst's testimony. To the extent that Moore complains that the State's counter-affidavit, filed with its response to his motion, violates the confrontation clause, we reject that argument. Confrontation clause rights are only implicated with witnesses providing testimony that goes to a defendant's guilt or innocence. *See* ***State v. LaTender***, 86 Wis. 2d 410, 434, 273 N.W.2d 260 (1979).

748 (1987) ("[N]ot all deficiencies in the record … require a new trial."). Rather, reconstruction may be an acceptable method for correcting a missing portion of the trial record. *See* ***State v. Raflik***, 2001 WI 129, ¶32, 248 Wis. 2d 593, 636 N.W.2d 690. Before record reconstruction occurs, though, an appellant must first show that some reviewable error has occurred relative to the missing record portion. *See* ***State v. DeLeon***, 127 Wis. 2d 74, 80-83, 377 N.W.2d 635 (Ct. App 1985). Moore does not suggest any particular reviewable error occurred beyond admission of the presentation itself.

¶31 The ***DeLeon*** requirement may seem like a catch-22, as the slideshow is not part of the appellate record. However, the State offered to print the slides at the close of the case to make them part of the record; Moore declined. Further, during briefing on the postconviction motion, the trial court ordered the State to supplement the record with the presentation. It is not clear if the State failed to file the presentation or if the presentation was filed but simply not transmitted to this court. However, it is the appellant's obligation to ensure a complete record for appellate review. *See* ***Fiumefreddo v. McLean***, 174 Wis. 2d 10, 26-27, 496 N.W.2d 226 (Ct. App. 1993). We assume missing portions of the record support the trial court's decision. *See* ***id.*** Moore is therefore not entitled to relief regarding the presentation.

D. The State's Closing Argument

¶32 Moore complains that the State made an improper closing argument when it told the jury, "[T]he portion that I think shows beyond any doubt that he is the man who committed this crime is that his entire male DNA profile is found on her cervix." Although Moore did not object at the time, he argues the statement is plain error, allowing him to raise it now, notwithstanding the lack of objection.

See WIS. STAT. § 901.03(4); ***State v. Jorgensen***, 2008 WI 60, ¶21, 310 Wis. 2d 138, 754 N.W.2d 77.

¶33 Counsel is given considerable latitude in closing arguments. *See* ***State v. Draize***, 88 Wis. 2d 445, 454, 276 N.W.2d 784 (1979). "The prosecutor may 'comment on the evidence, detail the evidence, argue from it to a conclusion and state that the evidence convinces him and should convince the jurors.'" *See* ***id.*** (citation omitted). "The line between permissible and impermissible argument is thus drawn where the prosecutor goes beyond reasoning from the evidence to a conclusion of guilt and instead suggests that the jury arrive at a verdict by considering factors other than the evidence." *See* ***id.***

¶34 Moore's complaint about the State's argument really goes to the nature of the DNA evidence presented. The analyst could not develop a complete DNA profile on L.M.'s attacker. Rather, she had to rely on a Y-chromosome profile because of the quantity of genetic material available.[5] This profile was consistent with the Y-chromosome profile she developed from Moore's standard buccal swab. Based on the profile, the analyst determined that "the probability of selecting a random unrelated male individual would be … [o]ne in 1,558 individuals in the African American population" to which Moore belongs. Moore thus asserts the State's argument was improper for asserting he was the assailant "beyond any doubt" when the DNA profile is not exclusively his.

¶35 The trial court determined that the State's comments were permissible, and we agree. The State's comment that Moore's male DNA profile

[5] Barring unusual circumstances, the Y chromosome is found only in men.

was present on L.M.'s cervix is not inaccurate and, coupled with the other evidence in the case, we do not perceive an error, much less plain error, in describing the DNA profile as the clincher given the standard set out in ***Draize***.

E. Possible Juror Bias

¶36 After the State called victim L.M. as its first witness, Juror 12 informed the court that she knew the victim. Juror 12 was individually questioned by the court and the parties. She said she did not have a personal relationship with the victim, but the victim's daughter went to school with the juror's son. The juror knew the daughter's first name but did not realize what her last name was. The juror also realized that she knew where L.M. lived because she had dropped her son off there some years prior for an eighth-grade graduation party. The juror expressed her ability to be impartial despite knowing the victim somewhat. At the close of the case, the juror was excused as the alternate by stipulation.

¶37 To be awarded a new trial because a juror lacked candor during *voir dire*, a defendant must satisfy the trial court that "(1) a juror incorrectly or incompletely responded to a material question on *voir dire* and if so that (2) it is more probable than not that under the facts and circumstances surrounding the particular case, the juror was biased against the moving party." *See* ***State v. Faucher***, 227 Wis. 2d 700, 726, 596 N.W.2d 770 (1999).

¶38 Moore claims that the juror here was objectively biased. Objective bias focuses on "whether the reasonable person in the individual prospective juror's position could be impartial." *See* ***id.*** at 718. "Whether a juror is objectively biased is a mixed question of fact and law" but, because the legal conclusion is so intertwined with the factual findings, we will give weight to the trial court's conclusion on bias. *See* ***id.*** at 720.

¶39 The trial court, rejecting Moore's attempt to strike the juror for cause, stated:

> The fact that this juror came out here and immediately raised the issue herself, to me shows how credible she is and how upfront she is.
>
> The fact that she stated what she did on the record and has no knowledge of what occurred and that she has absolutely no social relationship except for the fact four or five years ago she may have dropped her child off at their house for a party, I don't believe creates any bias.

¶40 Moore does not address the trial court's ruling on the matter, and the only argument he offers to support his claim of error is to reiterate the children's school connection and claim that "[c]learly, the facts and circumstances of the relationship between" the juror, the victim, and the victim's daughter "created an obvious and objective bias that warranted" striking the juror for cause. We reject this conclusory assertion and defer to the trial court's decision.[6]

F. Sufficiency of the Evidence

¶41 Moore also complains of insufficient evidence to support the jury's verdicts. In doing so, he points to various pieces of evidence like L.M.'s inability to identify him in the photo array or the lack of any DNA at all on a baseball hat that was recovered to suggest that there is insufficient evidence to convict him. But this line of argument is inconsistent with the standard of review.

[6] We also agree with the State that, alternatively, failing to strike the juror for cause was harmless error because the juror was excused as the alternate. To the extent that Moore claims—for the first time in his reply brief, it appears—that the juror's lack of candor deprived him of some constitutional right relative to exercising peremptory challenges, we note that "peremptory challenges have not acquired a constitutional footing." *See* ***State v. Wyss***, 124 Wis. 2d 681, 723, 370 N.W.2d 745 (1985), *overruled on other grounds by* ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990).

¶42 We view the evidence in the light most favorable to the verdict, and if more than one reasonable inference can be drawn from the evidence, we must accept the one drawn by the jury. *See* ***State v. Poellinger***, 153 Wis. 2d 493, 504, 451 N.W.2d 752 (1990). "'[T]he jury verdict will be overturned only if, viewing the evidence most favorably to the [S]tate and the conviction, it is inherently or patently incredible, or so lacking in probative value that no jury could have found guilt beyond a reasonable doubt.'" ***State v. Alles***, 106 Wis. 2d 368, 376-77, 316 N.W.2d 378 (1982) (citation and emphasis omitted).

¶43 L.M. described her attacker as a black male no older than twenty-five years old, but not a teen. Moore was twenty-one years old. L.M. estimated her attacker to be between five-feet-eight-inches and five-feet-ten-inches tall. Moore is five feet and ten inches tall. L.M. described her attacker as having a medium to dark complexion. Moore's booking photo describes his skin as medium brown.

¶44 L.M. described her assailant as wearing black sweatpants and a black cap with white writing. When Moore fled as Officer Frailey approached him, Moore was wearing black pants that looked like sweatpants and a black hat with white trim. After Moore was arrested and his path backtracked, officers found, half a block from where Moore was arrested, a gray sweatshirt and a black hat with white trim. The sweatshirt had L.M.'s blood on it. The DNA evidence from swabs taken from L.M.'s cervix, vagina, and labia all matched Moore's DNA profile, albeit a limited profile, and none of the DNA evidence excluded Moore.

¶45 The DNA evidence, coupled with his proximity to the scene and similarity to the described assailant, constituted sufficient evidence for a jury to

find Moore guilty beyond a reasonable doubt. This is true notwithstanding other evidence that does not strengthen the State's case.

G. Summary

¶46 As the record conclusively demonstrates that Moore was not entitled to relief, or because some of his allegations are conclusory, the decision to grant or deny a hearing on the postconviction motion was a matter for the trial court's discretion. We discern no erroneous exercise of that discretion in denying the motion without a hearing.

By the Court.—Judgment and order affirmed.

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