**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

May 20, 1999

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 98-1165-CR**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**FREDERICK D. JACKSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Dane County: MICHAEL B. TORPHY, Judge. *Affirmed.*

Before Dykman, P.J., Eich and Deininger, JJ.

PER CURIAM. Frederick Jackson appeals his conviction for substantial battery as a habitual criminal. The issue is whether he received ineffective assistance of counsel. We conclude that he did not, and we affirm.

To show ineffective assistance of counsel, a defendant is required to prove both that trial counsel's performance was deficient and that the deficiency prejudiced his defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Pitsch***, 124 Wis.2d 628, 633, 369 N.W.2d 711, 714 (1985). "Unless a defendant makes both showings, it cannot be said that the conviction … resulted from a breakdown in the adversary process that renders the result unreliable." ***Strickland***, 466 U.S. at 687. Review of the performance prong may be abandoned "if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice." ***Id***. at 697. The burden is on the defendant under the prejudice test to show that the errors committed by counsel were so serious that they deprived him of a fair trial, a trial whose result is reliable. *See* ***id***. at 687. In other words, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *See* ***id***. at 694.

Jackson first argues that he received ineffective assistance of counsel because his trial counsel should have objected when Jackson referred to himself as "Freddy G.," a name which, argues Jackson, implies gang affiliation. Jackson also argues that trial counsel should have objected when a witness referred to him as a "gangster" and a 911 tape was played at trial which stated that Jackson "was just released from prison."[1]

Jackson was not prejudiced when he referred to himself as "Freddy G.," when a witness referred to him as a "gangster," or when the 911 tape was

[1] Jackson also contends that trial counsel should have objected to some testimony about Jackson "talking about the kind of person he was," implying that he was "tough." Like the trial court, we conclude that this testimony does not support Jackson's claim of ineffective assistance of counsel and we do not consider this further.

played at trial because there is no reasonable probability that, absent the introduction of this evidence, the result at trial would have been different. *Cf.* ***Strickland***, 466 U.S. at 694. The evidence of Jackson's guilt in committing battery to Erin Amacker was overwhelming. Amacker testified that Jackson attacked her with a shovel and hit her in the head. She testified to this incident in some detail. Harold West, Amacker's boyfriend, testified that he saw Jackson hit Amacker in the head with the shovel. He, too, testified to this in some detail. Police officer Cindy Mierow testified that Laura Hill, Jackson's friend, made a statement on the night of the attack that she saw Jackson strike Amacker in the head with the shovel. A 911 tape was introduced into evidence to corroborate Hill's statement that she had seen someone get hit in the head with the shovel and that Jackson had done it. The parties stipulated that the treating doctor would have testified that Amacker suffered two lacerations to her head and needed fifteen stitches. Because there is no reasonable probability that, but for the admission of the evidence above, the results of the proceeding would have been different, Jackson was not prejudiced. *See* ***id.***

Jackson next argues that he received ineffective assistance of counsel when his trial counsel stipulated to the treating doctor's testimony without consulting with Jackson. The stipulation provided:

> Dr. Zienemann is unavailable to testify. The district attorney and the defense attorney agree that Dr. Zienemann would testify as follows. He would testify that Erin Amacker suffered two linear lacerations to her forehead. The first laceration was four centimeters long and required ten stitches to close. The second laceration was two centimeters and required five stitches to close.

At the hearing on the postconviction motion, Jackson testified that he never agreed to the stipulation and, in fact, was eager to have the doctor testify. However, Jackson's trial counsel testified that he had discussed with Jackson the stipulation regarding Dr. Zienemann's testimony and the reasons he thought that Jackson should stipulate to that testimony. He further testified that Jackson agreed with his decision to stipulate. The trial court chose to believe Jackson's counsel's version of the events, rather than Jackson's. The trial court concluded that trial counsel had a sound tactical reason for his decision, wanting to minimize the number of witnesses appearing for the state. Counsel's strategic decision to stipulate did not constitute ineffective assistance of counsel. *See* ***State v. Elm***, 201 Wis.2d 452, 464-65, 549 N.W.2d 471, 476 (Ct. App. 1996) ("A strategic trial decision rationally based on the facts and the law will not support a claim of ineffective assistance of counsel.").

Jackson next argues that counsel's decision to stipulate to the crime lab expert's testimony constituted ineffective assistance of counsel. We reject this claim because Jackson has made absolutely no showing that the stipulation was somehow prejudicial to him. *Cf.* ***Strickland***, 466 U.S. at 687.

Finally, Jackson argues that he received ineffective assistance because his attorney did not interview the victim or her boyfriend as potential witnesses. At the postconviction motion hearing, trial counsel testified that he made a strategic decision not to interview Amacker, the victim, prior to trial because he had heard that Amacker was no longer interested in pursuing the case and had moved out of town. Counsel further testified that he made a strategic decision not to interview West because West had already given a complete statement to the police, West had testified at the preliminary examination, and trial counsel had already had the opportunity to cross-examine him. Counsel explained

that he did not want to talk to West because he was Amacker's boyfriend and he felt that talking to him would only increase the likelihood that Amacker would testify at trial. Trial counsel had sound strategic reasons for his decision to refrain from interviewing these two witnesses. Reasonable strategy choices do not constitute deficient performance. *See* ***Elm***, 201 Wis.2d at 564-65, 549 N.W.2d at 476.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. RULE 809.23(1)(b)5, STATS.