COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-0785-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

GARRY P. VAN DE VOORT,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Price County: DOUGLAS T. FOX, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Garry Van de Voort appeals his conviction for twelve counts of endangering safety by reckless firearm use, twelve counts of first-degree recklessly endangering safety, and one count of recklessly endangering safety by intoxicated firearm use, after a jury trial, having pleaded not guilty by mental disease and defect. Psychiatric experts disagreed at trial as to

Van de Voort's mental state. The prosecution's expert believed him free of mental disease, while a court-appointed expert concluded otherwise. Van de Voort did not have his own expert at trial. However, Dr. Gene Braaksma testified during postconviction proceedings on Van de Voort's behalf that Van de Voort was indeed mentally defective, in part due to a car accident and resulting organic brain damage. No expert witness, however, had tied the brain damage to the car accident during the trial. Van de Voort argues on appeal that Dr. Braaksma's absence from the trial was the result of ineffective trial counsel and requires reversal in the interests of justice. We reject these arguments and affirm his conviction.

¶2 Van de Voort has shown neither ineffective trial counsel nor grounds for reversal in the interests of justice. For ineffective counsel, Van de Voort needed to show both deficient performance by trial counsel and resultant prejudice. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). For a new trial in the interest of justice, he needed to show that the real controversy was not tried. *See* ***State v. Hicks***, 202 Wis. 2d 150, 159-60, 549 N.W.2d 435 (1996). Here, Van de Voort has met neither standard. Dr. Braaksma, Van de Voort's postconviction expert, would have furnished largely cumulative testimony had he testified at trial. Dr. Michael Galli, the court-appointed expert, testified that Van de Voort was mentally defective. Two counselors testified that Van de Voort was delusional, and four jail workers related his strange behavior. Van de Voort himself briefly testified about the car accident and its effect on his mind, and Dr. Ralph Baker, the prosecution's expert, alluded to the matter in his report. Under these circumstances, Van De Voort has not shown that Dr. Braaksma's testimony would have materially affected the trial's outcome. In short, trial counsel was effective, and the real controversy was tried.

By the Court.—Judgments and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (1997-98).