

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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. 2014AP264

Cir. Ct. No. 2011CI2

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

IN RE THE COMMITMENT OF JOHN G. BRADLEY:

STATE OF WISCONSIN,

PETITIONER-RESPONDENT,

V.

JOHN G. BRADLEY,

RESPONDENT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. John Bradley appeals a judgment committing him as a sexually violent person and an order denying his postdisposition motion, in which he alleged ineffective assistance of trial counsel. Bradley contends his

counsel was ineffective for failing to object to hearsay consisting of quotes attributed to two confidential informants whose accusations led to a Department of Corrections (DOC) conduct report against him. Because we conclude that Bradley established neither deficient performance nor prejudice from his counsel's failure to object, we affirm the judgment and order.

BACKGROUND

¶2 The State relied on two expert witnesses to establish that Bradley is dangerous because he suffers from a mental disorder that makes it likely he will engage in additional acts of sexual violence. Although the two psychologists' diagnoses differed somewhat and they used some different actuarial tools, they both diagnosed Bradley with antisocial personality disorder based in part on his prison disciplinary record. That record included findings of deliberate exhibitionism by masturbating in front of staff, soliciting staff, and threatening staff.

¶3 During cross-examination of Dr. Anthony Jurek, Bradley's counsel asked questions—and Dr. Jurek testified—regarding Bradley's prior offenses and prison conduct reports, both sexual and nonsexual in nature. On redirect examination, Dr. Jurek was asked about a particular incident prompting one such conduct report. In answering, he read from his own evaluation report, which in turn referenced the conduct report quoting two confidential informants. Both informants were fellow inmates of Bradley. The informants told prison officials they heard Bradley explicitly describe violent sexual acts he wanted to perform with a female social worker “and force her if she didn't want to do it.” On recross-examination, Bradley's counsel elicited testimony that Bradley's alleged statement was made to other inmates, not to the social worker. Bradley contends

his trial counsel was ineffective for failing to object to the hearsay statements attributed to the confidential informants.

DISCUSSION

¶4 To establish ineffective assistance of counsel, Bradley must show both deficient performance and prejudice. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Counsel's performance is not deficient if he or she fails to raise an issue that has no merit. *State v. Wheat*, 2002 WI App 153, ¶14, 256 Wis. 2d 270, 647 N.W.2d 441. To establish prejudice, Bradley must show a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. A reasonable probability is one that undermines our confidence in the outcome. *Id.*

¶5 Bradley established neither deficient performance nor prejudice from his counsel's failure to interpose a hearsay objection because the court would have properly overruled the objection. The prison disciplinary report was admissible under the hearsay exception for public records and reports, WIS. STAT. § 908.03(8):¹

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office of agency, or (b) matters observed pursuant to duty imposed by law, or (c) in civil cases and against the State in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

Because WIS. STAT. ch. 980 proceedings are civil in nature, factual findings in DOC conduct reports are presumptively admissible under the public records exception. *State v. Keith*, 216 Wis.2d 61, 76-77, 573 N.W.2d 888 (Ct. App. 1997). The DOC finding that Bradley threatened to sexually assault the social worker was admissible, and Bradley's counsel was not ineffective for failing to interpose an objection to a witness referencing the contents of that report.

¶6 While it is unclear whether the precise words quoted by Dr. Jurek came from the DOC findings or merely from the other prisoners' allegations, the essence of the threat, not the precise words, helped form the basis of the experts' diagnoses of antisocial personality disorder. Bradley attempts to cast the challenged statements as untrustworthy—and thus inadmissible under WIS. STAT. § 908.03(8)—because they came from other prisoners. However, as Dr. Lakshmi Subramanian noted, the DOC did not simply take the word of other inmates. It conducted an investigation and found Bradley guilty of the rules violation. Bradley's counsel established that the precise words quoted by Dr. Jurek came from other inmates, not the social worker, mitigating any prejudice that might arise from quoting the precise language. Therefore even if the precise language comes from the allegation and not the DOC findings, a witness quoting that language does not undermine our confidence in the outcome.

¶7 Our confidence in the outcome is further bolstered by the overwhelming evidence supporting the State's case. Bradley had no expert witness to contradict the State's experts and relied entirely on his own self-serving denials, disagreement with the doctors' conclusions, and assurance that he was not likely to commit another sexual offense because he has matured and no longer has deviant fantasies. Because the State's case was much stronger than Bradley's

defense, introduction of the precise language quoted by Dr. Jurek does not undermine confidence in the outcome.

By the Court.—Judgment and order affirmed.

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

