COURT OF APPEALS
DECISION
DATED AND FILED

June 26, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2015AP1665-CR **Cir. Ct. No. 2012CF6000**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY DEWAYNE COMPTON, JR.,

DEFENDANT-APPELLANT.

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

Before Kessler P.J., Brash and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Anthony Compton, Jr., *pro se*, appeals from his judgment of conviction, entered upon a jury's verdict, for repeated sexual assault

of a child—three or more assaults against the same child. He also appeals an order of the trial court denying his motion for postconviction relief.

¶2 Compton raises six issues on appeal: (1) that he was not properly informed of the charge against him; (2) that the record—specifically, transcripts from the proceedings—contain "[n]umerous errors and omissions"; (3) that his arrest was unlawful and the custodial statement he made was inadmissible; (4) that the State committed a ***Brady***[1] violation and other discovery violations; (5) that the trial court relied on inaccurate information at sentencing; and (6) that his trial counsel was ineffective because he failed to provide Compton with his trial level case file for appellate review. We affirm.

BACKGROUND

¶3 On December 12, 2012, Compton was charged with sexually assaulting D.L.W., a child under the age of thirteen,[2] at least three times between January 1, 2006, and December 10, 2012. Compton was the boyfriend of D.L.W.'s mother, and Compton had lived with them since D.L.W. was a baby. D.L.W. told police that the assaults began when she was six years old and had continued through December 10, 2012. She stated that all of the assaults had occurred at their residence located on North 75th Street in Milwaukee, and had included penis-to-mouth contact, penis-to-anus contact, penis-to-vagina contact, and mouth-to-vagina contact.

[1] ***Brady v. Maryland***, 373 U.S. 83 (1963).

[2] D.L.W.'s date of birth is February 8, 2000.

¶4 Compton was arrested and interviewed by police. He was advised of his ***Miranda***[3] rights and agreed to answer questions regarding the assaults. Eventually, Compton admitted to having mouth-to-penis contact ten or more times, penis-to-vagina contact five or more times, and mouth-to-vagina contact ten or more times. He confirmed that the assaults all took place at the North 75th Street residence, in his bedroom, D.L.W.'s bedroom, and the basement. He stated that he believed the assaults had begun when D.L.W. was in fifth grade.

¶5 Both the complaint and the information stated that Compton was being charged with violating WIS. STAT. § 948.025(1)(a) (2011-12)[4]—three or more sexual assaults of the same child, contrary to WIS. STAT. § 948.02(1)(am), which specifies that the sexual assault was of a child under the age of thirteen who suffered great bodily harm. This crime is classified as a Class A felony, subject to a term of life imprisonment. ***Id.***; *see also* WIS. STAT. § 939.50(3)(a). However, both the complaint and the information reference the penalty as being a Class B felony, rather than a Class A felony. The penalty for a Class B felony is imprisonment for not more than sixty years. *See* Sec. 939.50(3)(b).

¶6 It was later discovered that the wrong statute was referenced on both the complaint and the information. Both documents should have stated that Compton was charged with violating WIS. STAT. § 948.025(1)(d)—three or more violations of § 948.02(1)(e), which involves sexual contact with a child under the age of thirteen. This crime is a Class B felony, the penalty indicated on the initial

[3] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[4] All references to the criminal code, chapters 939 to 951 of the Wisconsin Statutes, are to the 2011-12 version; all other statutory references are to the 2015-16 version unless otherwise noted.

complaint and information. *See* Sec. 948.025(1)(d). The error was addressed at a hearing on February 8, 2013, at which time the State requested that the trial court accept an amendment to the information and complaint to reflect the crime charged as § 948.025(1)(d). It was noted that the penalty on both documents had always been set forth correctly.

¶7 Compton pled guilty to the amended charge at that February 2013 hearing. However, in March 2013, with new counsel, Compton moved to withdraw his plea. The State did not contest the withdrawal of the plea, as it discovered that the time frame it stated in the complaint and information for when the sexual assaults of D.L.W. began—January 1, 2006—predated the enactment of WIS. STAT. § 948.025(1)(d). The State then filed a second amended information with the time frame for the sexual assaults revised as March 27, 2008 through December 10, 2012.

¶8 The matter went to trial in June 2013. The jury heard Compton's admissions regarding the sexual assaults of D.L.W. that Compton made during his custodial interrogation. Compton also testified at trial and admitted to rubbing his penis against D.L.W.'s thighs for sexual gratification, performing oral sex on her and having her perform it on him, and initiating sex with D.L.W. more than once. Additionally, the medical report of D.L.W.'s physical examination with a sexual assault nurse was introduced after the parties stipulated to its admission; that report indicated that there were no injuries to D.L.W.'s vagina. The jury found Compton guilty.

¶9 Prior to sentencing, the trial court ordered a presentence investigation report (PSI). Compton was subsequently sentenced to forty years, bifurcated as twenty years each of initial confinement and extended supervision.

¶10 After his conviction, Compton petitioned the trial court to view his PSI, which was granted. Compton also filed a motion to correct the record, claiming that the transcripts contained numerous errors and omissions. The trial court granted the motion in part,[5] and ordered the court reporters to "compare their notes to the defendant's claims of error and to file corrected transcript pages, as necessary." The corrected transcript pages were forwarded to Compton, and the trial court declared that "the transcripts, as corrected, are the record of this case."

¶11 Compton then filed a motion for postconviction relief, seeking a new trial or, in the alternative, resentencing, raising the same issues he presents on appeal. The trial court denied his motion in its entirety without an evidentiary hearing. This appeal follows.

DISCUSSION

1. Compton was properly informed of the charge against him.

¶12 Compton first argues that he was not properly informed of the charge against him, based on the fact that both the complaint and the information initially referenced the wrong statute—both documents listed WIS. STAT. § 948.025(1)(a), sexual assault of a child with great bodily harm, when they should have referenced § 948.025(1)(d), sexual contact with a child under the age of thirteen. Additionally, the State erred in designating the time frame for the assaults—the first date set forth in the complaint predated the enactment of the statute.

[5] Compton also sought the court reporters' audio notes to compare to the transcripts.

¶13 "Due process requires that a defendant in a criminal proceeding must be 'informed of the nature and cause of the accusation against him.'" ***State v. Kempainen***, 2015 WI 32, ¶19, 361 Wis. 2d 450, 862 N.W.2d 587 (citation omitted). Under that standard, the charges in the complaint and information "must be sufficiently stated to allow the defendant to plead and prepare a defense." ***Id.***, ¶17 (citation omitted). This is a question of constitutional fact that we review *de novo*. ***State v. Fawcett***, 145 Wis. 2d 244, 249, 426 N.W.2d 91 (Ct. App. 1988).

¶14 The complaint and information may be amended after arraignment with leave of the court as long as "such amendment is not prejudicial to the defendant." WIS. STAT. § 971.29(2). There is no prejudice to a defendant when "'an amendment to the charging document does not change the crime charged, and when the alleged offense is the same and results from the same transaction[.]'" ***State v. DeRango***, 229 Wis. 2d 1, 26, 599 N.W.2d 27 (Ct. App. 1999) (citation omitted). It is within the trial court's discretion to allow such an amendment, and that decision will not be reversed if there is a reasonable basis for the court's decision. ***State v. Flakes***, 140 Wis. 2d 411, 416-17, 410 N.W.2d 614 (Ct. App. 1987).

¶15 Even with the State's missteps, we conclude that the complaint and information contained sufficient information to inform Compton of the charges against him. From the beginning, the charges against Compton involved the repeated sexual assault of D.L.W., a child. The nature of the charges did not change with the initial reference to an erroneous subsection of WIS. STAT. § 948.025(1). Furthermore, Compton was present in court during the hearing where the subsection error was discussed and the charging documents amended.

¶16 Compton argues that had he understood the differences in penalties between the subsections—WIS. STAT. § 948.025(1)(a) is a Class A felony subject to life imprisonment, while § 948.025(1)(d) is a Class B felony with a maximum possible sentence of sixty years in prison—he would have pled guilty to § 948.025(1)(d), because he admitted to having sexual contact with D.L.W. However, he did in fact plead guilty to that charge: the error was discussed in court prior to Compton entering his plea to the amended charge, and he was advised of the elements and potential penalty of the correct charge. He later requested that his plea be withdrawn, which was not contested by the State due to the error regarding the time frame of the assaults in the charging documents.

¶17 Therefore, we conclude that the trial court had a reasonable basis for permitting the complaint and information to be amended, *see* ***Flakes***, 140 Wis. 2d at 416-17, and further, that Compton has failed to demonstrate that he was prejudiced by the amendments, *see* ***DeRango***, 229 Wis. 2d at 26. Accordingly, his claim fails.

2. The transcripts are sufficient for purposes of this appeal.

¶18 Compton maintains that the transcripts of his proceedings still contain numerous errors and omissions, even though they have already been checked by the court reporters, with some corrections made, in response to his postverdict motion.

¶19 "Whether a transcript is sufficient under appropriate standards to serve its necessary purpose on appeal is ultimately a matter of law for the appellate courts." ***State v. Perry***, 136 Wis. 2d 92, 97, 401 N.W.2d 748 (1987). A defendant's right to appeal requires that he or she "be furnished a full transcript—or a functionally equivalent substitute that, in a criminal case, beyond a reasonable

doubt, portrays in a way that is meaningful to the particular appeal exactly what happened in the course of trial." ***Id.*** at 99. If a transcript is deficient to the extent that there cannot be a meaningful appeal, the remedy is to grant a new trial. ***Id.***

¶20 However, not all transcript deficiencies require a new trial. ***Id.*** at 100. "An inconsequential omission or a slight inaccuracy in the record which would not materially affect appellate counsel's preparation of the appeal or which would not contribute to an appellate court's improper determination of an appeal do not rise to such magnitude as to require *ipso facto* reversal." ***Id.***

¶21 In this case, Compton, at the request of the trial court, specified which portions of the transcripts he believed contained errors. The trial court had the court reporters review their notes for errors; a few were found and fixed. After making those corrections, the court reporters reported to the trial court that "the balance of the transcripts comports with their notes." The trial court then deemed the record to be complete.

¶22 Compton argues that errors remain in the transcripts that will deprive him of obtaining a meaningful appeal, and still seeks to obtain the court reporters' audio notes. However, he provides no details of those alleged errors, and fails to explain how they would materially affect this appeal.

¶23 We are confident that after the thorough review of the transcripts performed by the court reporters, the record we have received accurately portrays what occurred at the trial. We therefore reject Compton's argument.

3. Compton's challenges to his arrest and his custodial statements made to police fail as a matter of law.

¶24 Compton next argues that his arrest was unlawful, and that his trial counsel was ineffective for not challenging the legality of his arrest. He also claims that the custodial statement he made to police was inadmissible.

¶25 Compton was arrested in his home after D.L.W.'s mother called police to report that D.L.W. had told her that Compton had sexually assaulted her repeatedly over several years. D.L.W. also provided a detailed description of the assaults to the police. Thus, there was probable cause to arrest Compton because the police had obtained "information which would lead a reasonable police officer to believe that the defendant probably committed a crime." ***State v. Felix***, 2012 WI 36, ¶28, 339 Wis. 2d 670, 811 N.W.2d 775 (citation omitted).

¶26 Still, even with probable cause, "entering a defendant's home without a warrant to accomplish an arrest violates the Fourth Amendment." ***Id.***, ¶29. Nevertheless, statements by a defendant that are made to police while in custody outside of the defendant's home—even though the arrest was unlawful—do not require suppression under the exclusionary rule. ***Id.***, ¶¶34-40 (citing ***New York v. Harris***, 495 U.S. 14, 17 (1990) (where the court held that the exclusionary rule '"was not intended to grant criminal suspects … protection for statements made outside their premises where the police have probable cause to arrest the suspect for committing a crime"') (citation omitted)). Our supreme court in ***Felix*** adopted this exception to the exclusionary rule as set forth in ***Harris***. ***Felix***, 339 Wis. 2d 670, ¶38.

¶27 Compton claims—in both his postconviction motion and on appeal—that he brought this to the attention of both of his trial lawyers, but they failed to raise this issue. To prevail on an ineffective assistance of counsel claim, a defendant must demonstrate both that counsel's performance was deficient and

that the deficiency prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). To demonstrate deficiency, a defendant must show that counsel's actions or omissions were "professionally unreasonable." ***Id.*** at 691. To demonstrate prejudice, "[t]he 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." ***Id.*** at 694. If a defendant fails to satisfy one component of the analysis, a court need not address the other. ***Id.*** at 697. "'We review *de novo* the legal questions of whether deficient performance has been established and whether it led to prejudice rising to a level undermining the reliability of the proceeding.'" ***State v. Roberson***, 2006 WI 80, ¶24, 292 Wis. 2d 280, 717 N.W.2d 111 (citation omitted; italics added).

¶28 Compton argues that if it had not been for his arrest—which was unlawful—he would not have made the inculpatory statements to police during their interrogation. However, that is not the law according to ***Harris*** and ***Felix***. *See* ***Felix***, 339 Wis. 2d 670, ¶38. At the time Compton admitted sexual contact with D.L.W. to police, he was in custody at the police station, not in his home. Therefore, Compton's custodial statement was not subject to the exclusionary rule. *See* ***id.***, ¶35.

¶29 Given that the statement was admissible, Compton fails to demonstrate how his trial counsels' failure to challenge his arrest prejudiced his defense. The jury still would have heard the admissions that Compton made to police, as well as the admissions he made during his testimony at trial. Thus, there is no reason to believe that the outcome of the trial would have been different. *See* ***Strickland***, 466 U.S at 694. In failing to prove the prejudice prong of the ***Strickland*** test, Compton's ineffective assistance claim fails. *See* ***id.*** at 697.

¶30 Furthermore, our supreme court has determined that "due process is satisfied following an illegal arrest when the accused has been bound over following a preliminary hearing involving a finding of probable cause, has been arraigned by the [trial] court, and has received a fair trial." ***Walberg v. State***, 73 Wis. 2d 448, 459, 243 N.W.2d 190 (1976). That all occurred in this case, and we therefore agree with the trial court that "[a]ny infirmity in [Compton's] arrest was cured."

¶31 With regard to Compton's challenge to his custodial statement, we have already explained that the statement was not subject to the exclusionary rule. Additionally, we note that the record indicates that Compton affirmatively waived his right to a ***Miranda-Goodchild***[6] hearing regarding the voluntariness of his statement to police.

¶32 For these reasons, Compton's challenges relating to the legality of his arrest and the admissibility of his custodial statement fail.

*4. The State did not commit a **Brady** violation or other discovery violation.*

¶33 We next address Compton's claim of a ***Brady*** violation. Under the ***Brady*** rule, the State is obligated to disclose evidence that is "favorable to an accused," including both exculpatory and impeachment evidence. ***State v. Harris***, 2004 WI 64, ¶12, 272 Wis. 2d 80, 680 N.W.2d 737. The ***Brady*** rule does not require that the exculpatory evidence is disclosed prior to trial, however; rather, it requires that the evidence be disclosed to the defendant "in time for its effective

[6] ***State ex rel. Goodchild v. Burke***, 27 Wis. 2d 244, 133 N.W.2d 753 (1965).

use." ***State v. Harris***, 2008 WI 15, ¶63, 307 Wis. 2d 555, 745 N.W.2d 397 (footnote omitted).

¶34 The evidence in question is the medical report of D.L.W. It appears that Compton filed a *pro se* discovery request to the trial court prior to trial to obtain the medical report.[7] Although Compton apparently did not personally receive the medical report, his new counsel did, albeit on the morning of trial. Nevertheless, Compton's trial counsel stipulated to its admission at trial. In fact, Compton's counsel specifically stated that he wanted the report admitted, and then proceeded to reference it in support of his defense that there was no medical or scientific evidence of sexual assault. Thus, the defense was provided with the favorable evidence in time for it to be effectively utilized at trial. As a result, we conclude that there was no ***Brady*** violation. *See* ***Harris***, 307 Wis. 2d 555, ¶63.

¶35 Compton also makes an allegation that his right to confrontation was violated because the sexual assault examination nurse who testified at trial was not the same nurse who examined D.L.W. However, the testifying nurse was called as an expert to rebut testimony of the police officer elicited on cross-examination by Compton's trial counsel, with regard to information about the female anatomy relevant in sexual assault cases. That nurse's testimony was limited to relevant general information; she did not testify to information specific to D.L.W.'s exam. "Although a [trial] court's decision to admit evidence is ordinarily a matter for the court's discretion, whether the admission of evidence violates a defendant's right

[7] This request was apparently filed after Compton's initial trial counsel had withdrawn, and before he was appointed new trial counsel. In his brief, Compton states that the discovery request is dated April 29, 2013; however, we note that there is no date on this document in the record.

to confrontation is a question of law subject to independent appellate review." ***State v. Williams***, 2002 WI 58, ¶7, 253 Wis. 2d 99, 644 N.W.2d 919. Based on the limited nature and scope of the nurse's testimony, we conclude that there was no violation of Compton's confrontation rights.

¶36 Accordingly, we reject Compton's claims of discovery violations by the State.[8] Additionally, to the extent that Compton claims that his trial counsel was ineffective regarding these assertions, we reject that argument as well since we have determined that all of his claims fail. *See* ***State v. Allen***, 2017 WI 7, ¶46, 373 Wis. 2d 98, 890 N.W.2d 245 ("It is well-established that trial counsel could not have been ineffective for failing to make meritless arguments.").

5. Compton fails to demonstrate that the trial court relied on inaccurate information at sentencing.

¶37 As previously noted, Compton was permitted to view his PSI, and his basis for this claim is that it contains numerous inaccuracies. He specifically focuses on two alleged errors stated in the PSI: that there was a weapon used in the crime for which he was convicted, and that he witnessed his mother stab his father.[9]

[8] Compton makes another discovery violation claim with regard to his cell phone, which was confiscated by police to search for videos of D.L.W. and pornographic material. Compton claims the cell phone contained a recording of a conversation between himself and D.L.W.'s mother regarding a claim of sexual abuse allegedly made by the mother against someone else. This alleged "evidence" was never addressed or discussed at trial. Compton fails to explain how this was a discovery violation by the State, nor does he provide legal support for his claim. Therefore, we do not consider it. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

[9] Compton states that his mother did in fact stab his father when he was a child; however, he states that he did not actually witness the stabbing.

¶38 "A defendant has a constitutionally protected due process right to be sentenced upon accurate information." ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. When seeking resentencing based on inaccurate information at sentencing, a defendant "'must show both that the information was inaccurate and that the court actually relied on the inaccurate information.'" ***Id.***, ¶26 (citations and one set of quotation marks omitted). Whether a defendant has been denied this right is a constitutional issue that we review *de novo*. ***Id.***, ¶9.

¶39 At sentencing, the trial court noted that it had reviewed the PSI, numerous other documents submitted by Compton, the charging documents, and its notes from the trial. The court then explained the factors it was considering: the protection of the public, harm to the victim, Compton's possible rehabilitation, and deterrence. The court also discussed Compton's character and the nature of the crime. These are all appropriate sentencing factors. *See* ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The trial court never referenced those specific statements in the PSI that Compton asserts are erroneous. Therefore, we conclude that Compton has not demonstrated that the trial court relied on inaccurate information, and thus he is not entitled to resentencing. *See* ***Tiepelman***, 291 Wis. 2d 179, ¶9.

¶40 Also related to his request for resentencing is Compton's argument that he did not have sufficient time to review the PSI and was denied further access to it. In July 2014, the trial court granted Compton access to the PSI to be viewed "for reasonable periods of time" pursuant to WIS. STAT. § 972.15(4m). The trial court denied a subsequent request from Compton for further viewing, finding that Compton had already viewed his PSI in October 2014 "for approximately three hours and forty-five minutes," and that "this was ample time to review the [PSI] for postconviction purposes[.]"

¶41 A defendant's "opportunity to view the [PSI] report must be meaningful; the defendant should have sufficient time to conduct a thorough review of the document[.]" ***State v. Parent***, 2006 WI 132, ¶43, 298 Wis. 2d 63, 725 N.W.2d 915. Compton fails to explain why three hours and forty-five minutes was not sufficient time to conduct a "meaningful" review of his PSI; he only states that he believed he would be allowed additional time for review. Because this is merely a general statement that is not supported by any legal reasoning, we decline to address this issue. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

6. Compton's claim that his trial counsel was ineffective for failing to provide him with his file from the trial is legally insufficient.

¶42 Compton's final argument is that his trial counsel was ineffective because he failed to provide Compton with his trial level case file for this appeal. Compton concedes that the State Public Defender's office provided him with duplicate copies of the discovery materials from the case, but Compton argues that is not sufficient because it did not contain "the investigative efforts" of his trial counsel.

¶43 Again, this argument consists of only a general conclusory statement with no legal support, which we generally will not consider. *See* ***id.*** Furthermore, Compton offers no explanation about how this investigative information would have any effect on the outcome of these proceedings. *See* ***State v. Wirts***, 176 Wis. 2d 174, 187, 500 N.W.2d 317 (Ct. App. 1993) ("A criminal defendant who claims ineffective assistance of counsel cannot ask the reviewing court to speculate whether counsel's deficient performance resulted in prejudice to the defendant's defense. The defendant must affirmatively prove prejudice.").

¶44 In sum, Compton has failed to demonstrate that he is entitled to relief for any of his claims. Accordingly, we affirm.

By the Court.—Judgment and order affirmed.

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