IN THE

SUPREME COURT OF THE UNITED STATES

ANTONIO D. WILLIAMS,

Petitioner,

vs.

WILLIAM J. POLLARD,

Respondent.

APPENDIX

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United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 4, 2020
Decided March 13, 2020

Before

DIANE S. SYKES, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

No. 19-1922

ANTONIO WILLIAMS,
Petitioner-Appellant,

v.

WILLIAM J. POLLARD,
Respondent-Appellee.

Appeal from the United States District Court for the Eastern District of Wisconsin.

No. 18-CV-67

Nancy Joseph,
Magistrate Judge.

ORDER

Antonio Williams has filed a notice of appeal from the denial of his petition under 28 U.S.C. § 2254 and an application for a certificate of appealability. This court has reviewed the final order of the district court and the record on appeal. We find no substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2).

Accordingly, the request for a certificate of appealability is DENIED. Williams's motion for appointment of counsel is DENIED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANTONIO WILLIAMS,

Petitioner,

v. **Case No. 18-CV-67**

WILLIAM J. POLLARD,

Respondent.

DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

Antonio Williams, a prisoner in Wisconsin custody, seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Williams alleges that his conviction for four counts of first-degree intentional homicide is unconstitutional. For the reasons stated below, the petition for writ of habeas corpus will be denied and the case dismissed.

BACKGROUND

Williams challenges his judgment of conviction for four counts of first-degree intentional homicide in Milwaukee County Circuit Court. (Judgment of Conviction, Answer to Habeas Petition ("Answer"), Docket # 10-1.) Williams was sentenced to life imprisonment without extended supervision eligibility. (Habeas Petition at 3, Docket # 1.)

On July 4, 2008, sometime after midnight, Williams, Rosario Fuentez, and James Washington went looking for members of the "Murda Mobb" gang to take revenge on its members who had, about a week earlier, beaten up Williams and taken his watch. (*State v. Williams*, Appeal No. 2013AP814 (Wis. Ct. App. June 3, 2014), Ex. to Habeas Petition, Docket # 1-2 at 2.) The three drove around looking for the gang and stopped at Questions

Bar, a known hangout of the gang. (*Id.*) The men found their targets in the area of 28th Street and North Avenue in Milwaukee. (*Id.*) According to the criminal complaint, Williams had an SKS assault rifle and began firing it into a crowd of people who had left Questions Bar at closing time and gathered outside in the area of 28th Street and North Avenue. (*Id.*) Washington fired a semi-automatic assault rifle at the crowd, and Fuentez had a semi-automatic handgun that he fired at the crowd. (*Id.*) Four people died. (*Id.*)

During the investigation, Williams was interviewed by law enforcement and told a detective that on July 3, 2008, he was alone at the Ark Tavern and stayed there until closing time. (*Id.* at 3.) After Ark closed, Williams said that he went to his girlfriend's home and spent the night there, waking up on the morning of July 4th. (*Id.*)

Fuentez confessed to police, named Williams and Washington as co-actors, and made a deal with the State to plead guilty to four counts of first-degree reckless homicide in exchange for testifying against Williams and Washington. (*Id.*) Both Williams and Washington were charged with four counts of first-degree intentional homicide as party to a crime. (*Id.*) At trial, Fuentez testified that he, Williams, and Washington went to 28th and Center after midnight on July 4, 2008, armed with semi-automatic weapons, to get revenge on the "Murda Mobb" gang for beating up Williams and stealing his watch. (*Id.* at 17.) Fuentez testified that the three men hid in the gangway between houses and then Williams jumped out and started firing at the crowd. (*Id.*)

Both Williams and Washington were convicted of four counts of first-degree intentional homicide. *State v. Washington*, WI App 90, 2015 WL 5725868 (Oct. 1, 2015). Both filed postconviction motions seeking new trials on the ground of newly discovered evidence based on affidavits from Fuentez recanting his trial testimony implicating Williams

and Washington in the murders. (*State ex rel. Williams v. Clements*, No. 2015AP2643 (Wis. Ct. App. Sept. 6, 2017), Ex. to Habeas Petition, Docket # 1-3 at 2.) The trial court held an evidentiary hearing jointly addressing the men's claims and denied the motions. (*Id.*)

On direct appeal, Williams raised five issues: (1) that the trial court improperly limited cross-examination of the State's witnesses who testified as "cooperating" witnesses; (2) that the trial court erred when it let the State use the contents of a letter found in Williams' jail cell to impeach his alibi witness; (3) that the trial court should have granted his request for a mistrial made after the State asked a defense witness about seeing Williams with an assault weapon a year before the shootings; (4) that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963) by failing to give Williams a list of the names of patrons at a bar where two State's witnesses reported seeing one of Williams' co-actors the night of the shooting; and (5) that the judgment should be reversed in the interests of justice pursuant to Wis. Stat. § 752.35 because the cumulative effect of these errors prevented Williams from fully and fairly presenting the real controversy. (Docket # 1-2 at 2.) Williams did not challenge, however, the circuit court's postconviction decision denying Williams' claim for relief based on Fuentez's recantation. (Docket # 1-3 at 2–3.) The court of appeals rejected Williams' arguments and affirmed the judgment of conviction. (Docket # 1-2 at 1–31.)

Unlike Williams, Washington did challenge the trial court's ruling regarding Fuentez's recantation during his direct appeal. The court of appeals rejected the argument and affirmed the trial court's ruling. *Washington*, 2015 WL 5725868, at *5–6.

Williams subsequently filed a *State v. Knight*, 168 Wis. 2d 509, 484 N.W.2d 540 (1992) petition with the Wisconsin Court of Appeals, arguing that his appellate counsel was ineffective for failing to raise the issue of Fuentez's recantation during his direct appeal.

(Docket # 1-3.) The court of appeals rejected Williams' *Knight* petition, expressly adopting its reasoning from Washington's direct appeal, stating it was equally applicable to Williams. (*Id.* at 3–4.) The court of appeals found that since the recantation argument would not have been successful on appeal, Williams was not prejudiced by appellate counsel's failure to raise it. (*Id.* at 5.) The Wisconsin Supreme Court denied Williams' petition for review on January 8, 2018. (Answer, Docket # 10-15.) Williams filed a timely petition for writ of habeas corpus in this court on January 12, 2018. (Docket # 1.)

STANDARD OF REVIEW

Williams' petition is governed by the Antiterrorism and Effective Death Penalty Act ("AEDPA"). Under AEDPA, a writ of habeas corpus may be granted if the state court decision on the merits of the petitioner's claim (1) was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," 28 U.S.C. § 2254(d)(1); or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. § 2254(d)(2).

A state court's decision is "contrary to . . . clearly established Federal law as established by the United States Supreme Court" if it is "substantially different from relevant [Supreme Court] precedent." *Washington v. Smith*, 219 F.3d 620, 628 (7th Cir. 2000) (quoting *Williams v. Taylor*, 529 U.S. 362, 405 (2000)). The court of appeals for this circuit recognized the narrow application of the "contrary to" clause:

> [U]nder the "contrary to" clause of § 2254(d)(1), [a court] could grant a writ of habeas corpus . . . where the state court applied a rule that contradicts the governing law as expounded in Supreme Court cases or where the state court confronts facts materially indistinguishable from a Supreme Court case and nevertheless arrives at a different result.

Washington, 219 F.3d at 628. The court further explained that the "unreasonable application of" clause was broader and "allows a federal habeas court to grant habeas relief whenever the state court 'unreasonably applied [a clearly established] principle to the facts of the prisoner's case.'" *Id.* (quoting *Williams*, 529 U.S. at 413).

To be unreasonable, a state court ruling must be more than simply "erroneous" and perhaps more than "clearly erroneous." *Hennon v. Cooper*, 109 F.3d 330, 334 (7th Cir. 1997). Under the "unreasonableness" standard, a state court's decision will stand "if it is one of several equally plausible outcomes." *Hall v. Washington*, 106 F.3d 742, 748–49 (7th Cir. 1997). In *Morgan v. Krenke*, the court explained that:

> Unreasonableness is judged by an objective standard, and under the "unreasonable application" clause, "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable."

232 F.3d 562, 565–66 (7th Cir. 2000) (quoting *Williams*, 529 U.S. at 411), *cert. denied*, 532 U.S. 951 (2001). Accordingly, before a court may issue a writ of habeas corpus, it must determine that the state court decision was both incorrect and unreasonable. *Washington*, 219 F.3d at 627.

ANALYSIS

Williams raises four grounds for relief in his habeas petition. In grounds one and two, Williams challenges the court of appeals' rejection of the arguments raised in his *Knight* petition. (Docket # 1 at 7–8.) In grounds three and four, Williams challenges the court of appeals' decision on two of the issues raised in his direct appeal: the trial court limiting his cross-examination of cooperating witnesses and the alleged *Brady* violation. (*Id.* at 9–10.)

However, Williams has not developed the arguments for grounds three and four in his brief. As such, I find that he has abandoned grounds three and four and I will not address them further. *See Braasch v. Grams*, No. 04-CV-593, 2006 WL 581201, at *12 (E.D. Wis. Mar. 8, 2006) (citing *Duncan v. State of Wis. Dept. Health and Family Serv.*, 166 F.3d 930, 934 (7th Cir. 1999)) (arguments that a party fails to develop in any meaningful manner will be deemed waived or abandoned).

Williams makes two arguments that he was denied the effective assistance of appellate counsel. First, Williams argues his appellate counsel was ineffective for failing to raise the issue of Fuentez's recantation on his direct appeal. (Petitioner's Br. at 14–21, Docket # 14.) Second, although Williams' appellate counsel did raise the issue that his judgment should be reversed pursuant to Wis. Stat. § 752.35 in the interests of justice, Williams argues his appellate counsel should have argued that Fuentez's recantation justified reversal in the interests of justice. (*Id.* at 21–23.)

The proper standard on habeas review for evaluating whether appellate counsel was ineffective is the familiar two-pronged analysis of deficient performance and prejudice enunciated in *Strickland v. Washington*, 466 U.S. 668 (1984). *Smith v. Robbins*, 528 U.S. 259, 285 (2000). Counsel's performance is deficient when it falls "below an objective standard of reasonableness." *Strickland*, 466 U.S. at 687–88. However, when the petitioner is challenging the selection of issues presented on appeal, "appellate counsel's performance is deficient under *Strickland* only if she fails to argue an issue that is both 'obvious' and 'clearly stronger' than the issues actually raised." *Makiel v. Butler*, 782 F.3d 882, 897 (7th Cir. 2015) (internal citation omitted). This is because appellate counsel is not required to raise every non-frivolous issue on appeal. *Id.* A petitioner demonstrates the requisite prejudice "only

when appellate counsel fails to raise an issue that 'may have resulted in a reversal of the conviction, or an order for a new trial.'" *Winters v. Miller*, 274 F.3d 1161, 1167 (7th Cir. 2001) (internal citation omitted). In other words, "there must be a reasonable probability that the issue not raised would have altered the outcome of the appeal had it been raised." *Lee v. Davis*, 328 F.3d 896, 901 (7th Cir. 2003).

Williams spends much time arguing that appellate counsel's performance was deficient because the recantation argument was the stronger argument. (Petitioner's Br. at 14–23.) I need not, however, determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant because of the alleged deficiencies. *Strickland*, 466 U.S. at 697. "If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed." *Id.* The court of appeals did not address deficient performance in its opinion. I need not either. I will assume that counsel's performance was deficient and address prejudice under *Strickland*.

To prevail under § 2254(d)(1), Williams must show that the court of appeals unreasonably applied *Strickland*. Specifically, to establish prejudice, Williams must show a reasonable probability that the issue not raised by his appellate counsel (Fuentez's recantation) would have altered the outcome of his appeal had it been raised. *Lee*, 328 F.3d at 901. Williams does not meet this standard. Williams' case presents the unique circumstance where we come as close as possible to knowing what the court of appeals would have done had Williams' appellate counsel raised the issue that he failed to raise on direct appeal because Williams' co-actor, Washington, did raise the issue on direct appeal. Recall that the trial court held an evidentiary hearing jointly addressing Williams' and

Washington's claims and denied both motions. The court of appeals also rejected Washington's claim that a new trial was warranted based on Fuentez's recantation. More importantly here, in rejecting Williams' *Knight* petition, the court of appeals found that its analysis in Washington's direct appeal equally applied to Williams' claim. (Docket # 1-3 at 4.) Citing to its decision in Washington's direct appeal, the court of appeals reasoned that because Williams could not show that his lawyer would have been successful had he raised the recantation issue on direct appeal, Williams cannot show that he was prejudiced by appellate counsel's failure to do so. (*Id.* at 5.)

The court of appeals' prejudice analysis is not contrary to or an unreasonable application of *Strickland.* Again, to prevail on federal habeas review, Williams must show a reasonable probability of a different outcome had the issue of Fuentez's recantation been raised on appeal. Here, what Williams really argues is that had his counsel raised the recantation issue on appeal plus had the circuit court, on which the court of appeals relied for credibility findings, correctly applied the law, there is a reasonable probability he would have prevailed on appeal. This argument is flawed. While Williams shows his disagreement with the court of appeals' finding in Washington's direct appeal, he does not show why he would have fared better on direct appeal than Washington did had his counsel raised the same issue. Williams' task is especially difficult because the court of appeals made clear in deciding Washington's claim that Williams would not have fared any better had the issue been raised in Williams' direct appeal. Thus, Williams has not shown a reasonable probability that the recantation issue would have altered the outcome of his direct appeal had it been raised. He is therefore not entitled to habeas relief under § 2254(d)(1).

Alternatively, to prevail under § 2254(d)(2), Williams must show that the state court's decision on the merits of the claim was based on an unreasonable determination of the facts in light of the evidence presented. A decision involves an unreasonable determination of the facts if it rests upon factual findings that ignores the clear and convincing weight of the evidence. *Goudy v. Basinger*, 604 F.3d 394, 399 (7th Cir. 2010). Factual determinations made by the state court are presumed correct and the petitioner has the burden of rebutting the presumption of correctness by clear and convincing evidence. 28 U.S.C. § 2254(e)(1).

Williams argues that the court of appeals based its decision on Williams' newly discovered evidence claim on an unreasonable determination of the facts. Under Wisconsin law, to set aside a judgment of conviction based on newly discovered evidence, the defendant must show that: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to an issue in the case; (4) the evidence is not merely cumulative; and (5) there is a reasonable probability that had the jury heard the newly-discovered evidence, it would have had a reasonable doubt as to the defendant's guilt. *State v. Plude*, 2008 WI 58, ¶ 32, 310 Wis. 2d 28, 48, 750 N.W.2d 42, 52. Both the trial court and the court of appeals acknowledged that the first four factors were not in dispute and the issue turned on whether there was a reasonable probability of a different outcome given the new evidence. (Docket # 1-3 at 4.) In holding that Williams failed to establish the fifth element, the circuit court found Fuentez's recantation not credible and the court of appeals held that this finding was supported by the evidence and thus not clearly erroneous. (*Id.* at 4–5.) Williams does not rebut any of the court of appeals' findings with clear and convincing evidence. Rather, he

argues why each finding the court of appeals made as to the fifth factor could have been viewed differently by the jury. (Petitioner's Br. at 18–20.) This falls far short of demonstrating that the court of appeals' decision rests upon factual findings that ignore the clear and convincing weight of the evidence. As such, Williams is not entitled to habeas relief.

CERTIFICATE OF APPEALABILITY

According to Rule 11(a) of the Rules Governing § 2254 Cases, the court must issue or deny a certificate of appealability "when it enters a final order adverse to the applicant." A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make a substantial showing of the denial of a constitutional right, the petitioner must demonstrate that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893, and n.4).

Jurists of reason would not find it debatable that Williams is not entitled to habeas relief. Thus, I will deny Williams a certificate of appealability. Of course, Williams retains the right to seek a certificate of appealability from the Court of Appeals pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure.

ORDER

NOW, THEREFORE, IT IS ORDERED that the petitioner's petition for a writ of habeas corpus (Docket # 1) be and hereby is **DENIED**.

IT IS FURTHER ORDERED that this action be and hereby is **DISMISSED**.

IT IS ALSO ORDERED that a certificate of appealability shall not issue.

FINALLY, IT IS ORDERED that the Clerk of Court enter judgment accordingly.

Dated at Milwaukee, Wisconsin this 30th day of April, 2019.

BY THE COURT:

s/Nancy Joseph
NANCY JOSEPH
United States Magistrate Judge

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DISTRICT I

September 6, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2015AP2643-W State of Wisconsin ex rel. Antonio D. Williams v. Marc Clements (L.C. # 2008CF3380)

Before Kessler, Brash and Dugan, JJ.

Antonio D. Williams, by Attorney Robert R. Henak, petitioned for writ of *habeas corpus*, arguing that he was denied the effective assistance of appellate counsel. *See State v. Knight*, 168 Wis. 2d 509, 522, 484 N.W.2d 540 (1992). The State responded to the petition, and Williams then filed a reply. After reviewing the parties' arguments, we conclude that the petition should be denied.

Williams' case was previously before us on direct appeal of his conviction. *See State v. Williams*, No. 2013AP814-CR, unpublished slip op. (WI App June 3, 2014). We set forth the facts and procedural history in our decision, so we do not repeat them at length here. *Id.*, ¶¶2-35. Briefly stated, Williams, James Washington, and Rosario Fuentez decided to take revenge on members of the Murda Mobb gang because members of the gang had beaten Williams a week earlier and had taken his watch. The three men found Murda Mobb gang members on a street corner, many of whom had just left Questions bar, which was known as a gathering place for the Murda Mobb gang. Williams, Washington and Fuentez all fired guns into the crowd. Four people were killed. After separate jury trials, Williams and Washington were both convicted of four counts of first-degree intentional homicide, as a party to a crime. Fuentez pled guilty to reduced charges pursuant to a plea agreement, a condition of which was that he testify against Williams and Washington.

Williams and Washington filed postconviction motions seeking new trials on the ground of newly discovery evidence based on affidavits from Fuentez recanting his trial testimony implicating Williams and Washington in the murders. The circuit court held an evidentiary hearing jointly addressing the men's claims. The circuit court then denied the motions.

On direct appeal, Williams' counsel raised five issues, but did not challenge the circuit court's postconviction decision denying Williams' claim for relief based on Fuentez's

recantation. We rejected the arguments and affirmed the judgment of conviction.[1] In the current *Knight* petition, Williams argues that he received ineffective assistance of appellate counsel because his lawyer did not raise the issue of Fuentez's recantation.

To prove a claim of ineffective assistance of counsel, a defendant must show that his lawyer performed deficiently and that this deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984). Moreover, a defendant who claims that he received ineffective assistance of counsel on direct appeal because appellate counsel did not raise certain arguments must demonstrate why the unraised claims are "clearly stronger" than the claims that appellate counsel raised on appeal. *State v. Starks*, 2013 WI 69, ¶60, 349 Wis. 2d 274, 833 N.W.2d 146.

As we previously explained, Williams did not raise the recantation issue on direct appeal, but his co-actor Washington *did challenge the circuit court's ruling during Washington's direct appeal*. Washington argued that the circuit court erred in ruling that a new trial was not warranted based on evidence that Fuentez recanted his trial testimony that implicated Washington and Williams. We rejected that argument and affirmed the circuit court's ruling. *See State v. Washington*, No. 2013AP956-CR, unpublished slip op. (WI App Oct. 1, 2015). Our

[1] Williams' appellate counsel unsuccessfully raised the following issues: (1) the trial court improperly limited cross-examination of the State's witnesses who testified as "cooperating" witnesses; (2) the trial court erred when it let the State use the contents of a letter found in Williams' jail cell to impeach his alibi witness; (3) the trial court should have granted his request for a mistrial made after the State asked a defense witness about seeing Williams with an assault weapon a year before these shootings; (4) the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by not giving Williams a report listing the names of people whose identification cards were scanned in a bar where two State witnesses reported seeing one of Williams' co-actors the night of the shooting; and (5) we should reverse the circuit court's decision because the full controversy was not fully tried. *See* WIS. STAT. § 752.35 (2015-16).

analysis that the Fuentez recantation did not warrant a new trial for Washington is equally applicable to Williams. We explained:

> "Motions for a new trial based on newly discovered evidence are entertained with great caution," and are submitted to the discretion of the circuit court. *State v. Terrance J.W.*, 202 Wis. 2d 496, 500, 550 N.W.2d 445 (Ct. App. 1996). We will uphold a circuit court's discretionary decision if the court "examined the relevant facts; applied a proper standard of law; and using a demonstrative rational process, reached a conclusion that a reasonable judge could reach." *State v. Sullivan*, 216 Wis. 2d 768, 780-81, 576 N.W.2d 30 (1998).
>
> In order to set aside a judgment of conviction based on newly discovered evidence, it must be determined that: (1) the evidence was discovered after conviction; (2) the defendant was not negligent in seeking the evidence; (3) the evidence is material to the case; (4) the evidence is not merely cumulative; and (5) it is reasonably probable that a different result would be reached at trial. *State v. Plude*, 2008 WI 58, ¶32, 310 Wis. 2d 28, 750 N.W.2d 42; *Terrance J.W.*, 202 Wis. 2d at 500.
>
> ....
>
> We explained in *Terrance J.W.* that "[b]y its nature, a recantation will generally meet the first four criteria." *Terrance J.W.*, 202 Wis. 2d at 501. As in *Terrance J.W.*, the first four criteria are not in dispute in the present case. Thus, the determinative factor is whether it is reasonably probable that a different result would be reached at a new trial. We agree with the circuit court that Washington failed to establish this factor.
>
> The circuit court determined that Fuentez's recantation was not credible. The court based this finding on the following facts: Fuentez had previously expressed fear about naming the individuals involved in the shooting; prior to executing the affidavit, Fuentez had stopped going to meals for fear that something would happen to him if he went to eat; Fuentez executed the affidavit at the request of a third party, who "would stare at [Fuentez] in a threatening manner"; Detective James Henseley had testified at the hearing that Fuentez had informed him that everything Fuentez testified to at trial was the truth and the averments contained in the affidavit were lies; Fuentez's demeanor at the evidentiary hearing compared to his demeanor at trial; and Fuentez's failure to answer questions at the evidentiary hearing, opting instead to invoke the Fifth Amendment or to answer "if that's what's in there, if that's what the affidavit says,

> you got the letters, the affidavit, it's in my handwriting. I ain't going to say no more."
>
> When a circuit court makes a finding as to a witness's credibility, an appellate court will not overturn that finding unless the finding is shown to be clearly erroneous. *Id.* at 501. The circuit court's finding that Fuentez's recantation was not credible is supported by the evidence and is, therefore, not clearly erroneous. "A determination that [a] recantation is not credible is sufficient to conclude that it is not reasonably probable that a different result would be reached at a new trial." *Id.* Accordingly, we affirm the circuit court's determination that Washington is not entitled to a new trial in light of Fuentez's recantation.

Because Williams cannot show that his lawyer would have been successful if he raised the recantation issue on direct appeal, Williams cannot show that he was prejudiced by appellate counsel's failure to do so. *State v. Golden*, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994) (counsel did not render ineffective assistance by failing to raise an issue that is meritless). Therefore, we reject Williams' argument that he received ineffective assistance of appellate counsel.

IT IS ORDERED that the petition for writ of *habeas corpus* is denied.

Diane M. Fremgen
Clerk of Court of Appeals

STATE OF WISCONSIN :CIRCUIT COURT: MILWAUKEE COUNTY
BRANCH 40

STATE OF WISCONSIN,

Plaintiff,

-vs- Case Nos. 08-CF-003380

ANTONIO D. WILLIAMS,

-and- 08-CF-003382

JAMES R. WASHINGTON,

Defendants.

DECISION ON MOTION FOR NEW TRIAL

APRIL 3, 2013

Proceedings held before the
Honorable REBECCA F. DALLET,
Circuit Court Judge Presiding.

A P P E A R A N C E S:

MARK WILLIAMS, Assistant District Attorney, appeared on behalf of the State.

TIM PROVIS and MARK ROSEN, Attorneys at Law, appeared on behalf of the Defendants.

ANTONIO D. WILLIAMS and JAMES R. WASHINGTON, the Defendants, appeared via videoconference from Dodge Correctional Institution.

NANCY CZERNIEJEWSKI, RPR
Official Court Reporter