COURT OF APPEALS
DECISION
DATED AND FILED

November 13, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1855-CR **Cir. Ct. No. 2008CF2852**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MATTHEW ALLEN LILEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Order reversed and cause remanded for further proceedings*.

Before Curley, P.J., Fine and Kessler, JJ.

¶1 FINE, J. Matthew Allen Lilek appeals the judgment entered on his no-contest pleas to second-degree sexual assault, with use of force, and to aggravated battery. *See* WIS. STAT. §§ 940.225(2)(a) & 940.19(6). After the

circuit court sentenced him to twenty years of initial confinement and fifteen years of extended supervision on the sexual-assault count, and to a concurrent term of three years of initial confinement and three years of extended supervision on the aggravated-battery count, Lilek sought to withdraw his pleas, contending that the circuit court did not adequately fulfill its responsibilities under WIS. STAT. § 971.08 to ensure that his pleas were, as phrased by § 971.08(1)(a), "made voluntarily with understanding of the nature of the charge and the potential punishment if convicted."[1] Lilek also argues that the circuit court erroneously exercised its sentencing discretion, and that it should not have ordered a re-evaluation of Lilek's competency once a psychiatrist found that he was not competent to be tried. *See* WIS. STAT. § 971.14.

¶2 The circuit court denied Lilek's postconviction motion. We reverse that order and remand the matter to the circuit court for an evidentiary hearing on the voluntariness of his pleas. *See* ***State v. Howell***, 2007 WI 75, 301 Wis. 2d 350, 734 N.W.2d 48; ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Consideration of the other issues Lilek raises is thus premature. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed); ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514, 520 (Ct. App. 1989) (cases should be decided on the "narrowest possible ground").

[1] WISCONSIN STAT. § 971.08(1) reads, as material here: "Before the court accepts a plea of guilty or no contest, it shall do all of the following: (a) Address the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted." (Formatting altered.)

I.

¶3 Born in February of 1967, Lilek has suffered significant disabilities his entire life. He is legally blind and, according to the material in the Record, functions with the cognitive ability of a twelve-year-old child.

¶4 Three months after Lilek was born, he developed encephalitis, a chronic neurological disorder that caused him to have recurring seizures. Over the next thirty years, doctors tried to control Lilek's disorder with drugs but had little success. In 1997, they did a partial frontal lobectomy in an attempt to control his seizures. They soon had to operate again to place a drainage tube in his skull because the lobectomy caused fluid to build up in Lilek's brain. Doctors removed the drainage tube after five days, and Lilek then got a staph infection and a blood disease. As a result, Lilek had to stay in the hospital for two months. He apparently had no further seizures for three years, but when they came back Lilek had a second partial frontal lobectomy in order to remove that part of the brain suspected of causing his seizures. This did not stop the seizures, however, and doctors returned to drugs in an attempt to treat his seizures.

¶5 Lilek also suffers from significant other problems. His most recent diagnosis before the proceedings in this case was: "Cognitive Disorder due to Brain Injury, Mood Disorder Not Otherwise Specified, and Mild Mental Retardation." Lilek's Intelligence Quotient was pegged at between seventy-four to eighty. Further, he was being treated for "Schizotypal Personality Disorder and Schizoaffective Disorder."

¶6 According to the criminal complaint, Lilek "tricked" a seventy-five-year-old woman into letting him into her apartment in the building for people with visual and hearing impairments in which they both lived. The woman, like Lilek,

is legally blind. Lilek is accused of removing the woman's clothes, grabbing her breasts, putting her into her bathtub, where, according to the criminal complaint, he tried to have sex with her. The complaint recites that he stopped and left her apartment when he heard a doorbell ring.

¶7 In addition to the charges to which Lilek entered no-contest pleas, the State had also charged Lilek with burglary. *See* WIS. STAT. § 943.10(1m)(a) (unlawfully entering a building in order to commit a felony). After the circuit court found that Lilek was competent to be tried, and after the defense received opinions that there were no facts to support a plea under WIS. STAT. § 971.15(1) ("A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law."), Lilek pled no contest to sexual assault and aggravated battery, and the State dismissed the burglary charge. The following are material excerpts from the plea hearing. We normally do not use the names of the lawyers when quoting from trial-court transcripts unless the names are pertinent to an issue on appeal, as it is here.

> THE COURT: All right. So Mr. Lilek, I understand that you are going to be entering two guilty pleas today. Do you understand that, sir?
>
> THE DEFENDANT: Yes, Your Honor.
>
> MR. KOHN: Actually, Your Honor, they're going to be no conte[s]t.
>
> THE COURT: They're two no contest pleas, right, Mr. Lilek?
>
> THE DEFENDANT: I said yes, Your Honor.
>
> THE COURT: Okay. And do you understand those are going to be to the charges of second-degree sexual assault?

> THE DEFENDANT: I do.
>
> THE COURT: And aggravated battery?
>
> THE DEFENDANT: I get that, Your Honor.
>
> THE COURT: Okay. I'm going to ask you a bunch of questions, Mr. Lilek, just to make sure that you understand everything that is going on.
>
> THE DEFENDANT: That's cool.
>
> THE COURT: So as to the second-degree sexual assault, do you understand that after you plead guilty there'll be a sentencing?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And do you understand that the maximum possible penalty that you face is a fine of not more than $100,000 and imprisonment for not more than 40 years or both; do you understand?
>
> THE DEFENDANT: Actually what I was told originally was that it was $5,000.
>
> THE COURT: Okay. Well, it's $100,000 is a maximum fine and 40 years imprisonment or both; do you understand?
>
> THE DEFENDANT: Yes, but it [*sic*] was told originally. I'm just telling you what I was told.
>
> MR. KOHN: Your Honor, Mr. Pendergast and I spent approximately three hours on Tuesday night going through that. I read him specifically the potential maximum penalties and I also wrote them down on the Plea Questionnaire where they are reflected.

At the start of the plea hearing, Kohn identified Pendergast as "our intern, Sam Pendergast." We continue with material excerpts from the plea-hearing transcript:

> THE COURT: Okay. So now, Mr. Lilek, if you used to think that it might have been $5,000, do you understand now before you actually enter your plea that the maximum fine you face is $100,000 and maximum time you could spend in prison for the sexual assault is 40 years; do you understand?

THE DEFENDANT: Yes, Your Honor. It's just what I was told before I was told. Now I am told different. Now I understand.

THE COURT: And you understand that of the 40 years, I could give you 25 years that you would initially serve in prison, and I could give you a maximum of 15 years after that for supervision; do you understand?

THE DEFENDANT: Yes, but I spent 20 months here also.

THE COURT: Okay, that is good to know. And then as to Count Two, the battery charge, the aggravated battery, do you understand that for that --

THE DEFENDANT: Yes, Your Honor.

THE COURT: -- charge the maximum that you face at sentencing is a fine of not more than $10,000 or imprisonment for not more than six years; do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And of the six years, you could do three years as a maximum initial term in prison and three years as a maximum on supervision?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. Do you understand that the State is going to make a recommendation at sentencing?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And they're going to be recommending a prison term up to the court?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand your attorney will make a recommendation?

THE DEFENDANT: Yes again, Your Honor.

THE COURT: And I will hear from people that want to tell me what they want to tell me?

THE DEFENDANT: Yes.

THE COURT: And in the end, I will have to decide what to sentence you to?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand I could give you the maximum penalties on both of these charges?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Okay. What is your plea to sexual assault, second degree?

THE DEFENDANT: No contest.

THE COURT: Prior to signing the Plea Questionnaire Form and this Addendum form, did you talk about these forms with your attorney?

THE DEFENDANT: I did on Tuesday actually.

THE COURT: Yes, okay. And did you understand the forms?

THE DEFENDANT: M-hm. Yes, Your Honor. I mean yes, Your Honor.

THE COURT: And do you understand that by pleading guilty you are giving up certain rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have a right to a jury trial set for next week.

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand you're giving up the right to have that jury trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that includes the rights that you are giving up include the right to remain silent and not incriminate yourself?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The right to see and cross-examine the witnesses that the State would call?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The right to have your own witnesses come to court and tell what happened?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The right to have your case decided by a jury of 12 people who would all have to agree before they reach their verdict?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And the right to make the State prove you guilty by evidence beyond a reasonable doubt that you committed both of these crimes.

THE DEFENDANT: Yes, Your Honor.

THE COURT: You also understand you're giving up the right to raise any kind of motions or defenses that you have to these crimes?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Has anyone made any threats or promises to you to get you to plead guilty today?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone promised you anything to get you to plead guilty today?

THE DEFENDANT: No, Your Honor.

THE COURT: Have you used any alcohol or drugs in the last 24 hours?

THE DEFENDANT: I am not right now.

THE COURT: Do you take any medications --

THE DEFENDANT: Well, actually I did not get any today because I left early actually.

THE COURT: So when's the last time you took your medications?

THE DEFENDANT: Last night I was notified to, but, and I saw a nurse today.

THE COURT: And so when was the last time, do you remember the last time?

THE DEFENDANT: Actually, last night actually.

THE COURT: Okay. And what, do you remember what you take?

THE DEFENDANT: I don't drink alcohol. I am not quite sure about that. I don't know how to describe that because I don't know.

THE COURT: And does that medicine make you feel better?

THE DEFENDANT: Somewhat. I am not sure how to describe it.

THE COURT: Does it interfere with your ability to understand me or anything that is going on here today?

THE DEFENDANT: Not that kind.

THE COURT: Okay. So you are understanding everything that is going on?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay. And did you talk about the criminal complaint with your lawyer?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you read it or did he read it to you?

THE DEFENDANT: I'm visually handicapped so that has to be read to me.

THE COURT: So he read that form to you, and do you understand it?

THE DEFENDANT: Yes.

THE COURT: And did you talk with your attorney about the elements of each of these offenses, what the State would have to prove if we had a trial on both of these charges?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And did you understand that if we had a trial on the sexual assault, second-degree, the State would have to prove that on May 31, 2008, at [the address of the Badger Home for the Blind] that you had sexual contact with [the woman] do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That she did not consent to the sexual contact?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That you had sexual contact with her by use or threat of force or violence?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you understand that sexual contact … is an intentional touching?

THE DEFENDANT: I was told exactly that by my attorney.

THE COURT: And in this case it's a touching of what, [Assistant District Attorney]?

[Assistant District Attorney]: Well, her breast was touched and her vagina was touched.

THE COURT: All right. So it's an intentional touching of the breast and vagina of [the woman] by you, and the touching could be directly or through the clothing?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand it requires that you acted with the intent to become sexually arouse [*sic*] or gratified?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. And as to the aggravated battery charge, do you understand that the State would have to prove on May 31st, 2008 at [the address for the Badger Home for the Blind] that you caused bodily harm to [the woman]?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That you wanted to cause her bodily harm?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you know bodily harm means physical pain or injury --

THE DEFENDANT: Yes, Your Honor.

THE COURT: -- illness or impairment of physical condition?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That your conduct created a substantial risk of bodily harm?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I'm sorry, substantial risk of great bodily harm; do you remember that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you talked to your lawyer about what great bodily harm means?

THE DEFENDANT: Yes, Your Honor.

THE COURT: That is serious injury, bodily injury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And that is injury which creates a substantial risk of death or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ, or other serious bodily injury?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And you understand all those elements?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand that if you are not a citizen of the United States that your pleas could result in deportation, the exclusion from admission to this country, or the denial of naturalization under federal law?

> THE DEFENDANT: I'm not quiet [*sic*] sure what that means.
>
> THE COURT: It means if you are not a citizen --
>
> THE DEFENDANT: Oh, yeah. I am, I am a citizen.
>
> THE COURT: Oh, I take it, but you do understand if you weren't that that could happen?
>
> THE DEFENDANT: Okay. Yes, Your Honor.
>
> THE COURT: And then do you understand, sir, that once you are convicted of these charges, these are felonies so you would not be able to possess guns ever again?
>
> THE DEFENDANT: I never -- can't have guns because of my vision. Handicapped, I can't shoot straight anyways.
>
> THE COURT: And you also understand as to the sexual assault that you are going to be required to register as a sex offender?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Have you had enough time to talk over this case with your attorney?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And are you satisfied with his representation?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Are you confused at all about anything that has gone on here today, Mr. Lilek?
>
> THE DEFENDANT: If I have any questions, Sam here will answer them for me.

As noted, "Sam" is an "intern" in the office of Lilek's trial lawyer. There is no indication in the Record that Sam is a lawyer. We return to the plea-hearing colloquy:

> THE COURT: My question is and you haven't had any yet, right?

> THE DEFENDANT: No.
>
> THE COURT: Okay. And are you pleading no contest because you are not contesting facts in the complaint?
>
> THE DEFENDANT: Correct.

¶8 The circuit court then asked Lilek's lawyer about the time spent "going over the Guilty Plea Questionnaire" and his lawyer responded:

> Mr. Pendergast and I met with Mr. Lilek Tuesday night from about eight o'clock until about 11 or 11:15 in the evening this last week. We also met with him the week prior.
>
> The week prior we had Mr. Lilek go through with us his recollection of the events as they occurred, and I believe based on his rendition of his recollection of those events, and our discussions which we know was about a two- or three-hour period, that there is a factual basis for the pleas to these two counts, and that he understands and admits that he did commit acts which fit all of the elements of those two counts.
>
> And then I also spent about three or three and a half hours with Mr. Lilek on Tuesday night wherein we went through the fact basis again, but also went through the criminal complaint. We went through the jury instructions. I went through the plea form with him, and we broke down each and every line of the plea form to make sure that he understood the words, to make sure that he understood and could visualize what we were talking about. Much of what we spoke about was as far as what goes on in the courtroom, and what his rights are, were discussed in terms of the television series Matlock of which Mr. Lilek, he is a great fan and has seen many, if not all of those episodes.

Lilek's lawyer added:

> I think it's important to make that record because certainly in the future if were some doctor or lawyer to take a look at this record and then look at Matt's mental health history, an argument could be made that he was simply saying yes to everything and in response to your questions. But I believe based on the in-depth discussions we have

> had that he truly does understand the very basic rights that he is giving up, and he understands what those are.

The circuit court then asked Lilek's lawyer whether he had "any question about his competency to go at this point?" His lawyer answered:

> Personally, Your Honor, I'm not a doctor. I have, however, questioned his competency on a number of occasions and have turned to experts who have examined him both in the past, and ones that were retained after [I] came on this case, and they have advised me that he is, at a very basic level given the definition that is used in the criminal justice system, legally competent to proceed. And I rely on their judgment and their professional opinions regarding that.

The circuit court then asked Lilek's lawyer if he discussed possible motions and defenses and if he was satisfied that Lilek was "entering his pleas freely, voluntarily and intelligently?" Lilek's lawyer said that he had discussed defenses and answered "Yes" to the circuit court's question.

¶9 The circuit court then continued its colloquy with Lilek:

> THE COURT: … Mr. Lilek you entered a no contest plea here, right?
>
> DEFENDANT: Yes, Your Honor.
>
> THE COURT: Do you understand that in the end it has the same effect as saying you're guilty?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: Because I would find you guilty in response to the no contest plea.
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And you talked about that with your lawyer?
>
> THE DEFENDANT: Yes.

> [The circuit court then asked Lilek's lawyer to put the factual basis for the plea on the Record, which he did.]
>
> THE COURT: All right. So Matt, you just heard your attorney talking about what happened on that day. You agree with that, that you went in there with the intent to have sex with [the woman]?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And that you put her in the bathtub?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And you touched her breasts and her vagina?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: And that in doing so you hurt her causing a great risk of substantial great bodily harm by putting her in the bathtub and doing that?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: All right. I will find a factual basis to accept your plea, based on your plea of no contest, I now find you guilty of Count One, sexual assault, second-degree, use of threat of force or violence. And Count Two, aggravated battery in the manner and form as charged in the information, and I adjudge you convicted as of today's date and I order judgment of conviction entered in the record. I will dismiss Count Three, the burglary. I will order a [presentence investigation report], and we'll get a sentencing date. (Some formatting altered.)

¶10 As we have seen, Lilek's postconviction motion asked to withdraw his pleas and for resentencing. The circuit court denied the motion without an evidentiary hearing, ruling in its written decision that: "The defendant answered all of the court's questions appropriately and indicated that if he didn't understand something, he would ask [his lawyer] about it." (Brackets by the circuit court.) As we have seen from the plea hearing excerpt quoted above, however, Lilek did not say that he would ask his "lawyer." Rather, he said: "If I have any questions,

Sam here will answer them for me." (Emphasis added.) Lilek's lawyer's name was Steve Kohn, not Sam, and, Kohn told the circuit court at the start of the plea hearing that: "Also at counsel table is our intern, Sam Pendergast, Your Honor." We admonish the circuit court for inserting "[his lawyer]" when the transcript indicates that Lilek said "Sam" and not "Mr. Kohn, Steve, my lawyer" or some variant indicating that he meant Kohn, his lawyer, and not "Sam," Kohn's "intern."

II.

¶11 A defendant may withdraw a guilty or a no-contest plea after sentencing if he or she proves "by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice." ***State v. James***, 176 Wis. 2d 230, 236–237, 500 N.W.2d 345, 348 (Ct. App. 1993). The manifest-injustice test is satisfied if the defendant's no-contest plea was not knowing or voluntary. ***State v. Hoppe***, 2009 WI 41, ¶60, 317 Wis. 2d 161, 193, 765 N.W.2d 794, 809–810 ("A defendant may demonstrate a manifest injustice by showing that his guilty plea was not made knowingly, intelligently, and voluntarily."). When a defendant makes "a *prima facie* showing that his plea was accepted without the trial court's conformance with § 971.08 or other mandatory procedures" "and alleges that he in fact did not know or understand the information which should have been provided at the plea hearing" the circuit court must hold an evidentiary hearing to allow "the state to show by clear and convincing evidence that the defendant's plea was knowingly, voluntarily, and intelligently entered." ***Bangert***, 131 Wis. 2d at 274, 389 N.W.2d at 26; *see also* ***Howell***, 2007 WI 75, ¶7, ¶27, 301 Wis. 2d at 361, 367–368, 734 N.W.2d at 53, 57. These are issues of law that we review *de novo*. *See* ***State v. Brown***, 2006 WI 100, ¶21, 293 Wis. 2d 594, 612, 716 N.W.2d 906, 914–915.

¶12 Lilek argues that although the circuit court may have technically asked the right questions it "did not engage in a meaningful colloquy with" Lilek or establish "that he actually understood the elements of the offenses he was pleading to, the constitutional rights he was waiving, the nature of the plea agreement he entered into, and the likely consequences of his plea." Lilek asserts that the circuit court had an obligation to do more than just ask questions seeking "yes" or "no" responses because of his substantial cognitive disabilities. In the context of Lilek's significant disabilities, we agree.

¶13 ***Bangert*** recognized that there are three ways for a circuit court to make sure a defendant understands the nature of crimes to which he is pleading: (1) "the trial court may summarize the elements of the crime charged by reading from the appropriate jury instructions" or "from the applicable statute"; (2) "the trial judge may ask defendant's counsel whether he explained the nature of the charge to the defendant and request him to summarize the extent of the explanation, including a reiteration of the elements, at the plea hearing"; or (3) "the trial judge may expressly refer to the record or other evidence of defendant's knowledge of the nature of the charge established prior to the plea hearing." ***Bangert***, 131 Wis. 2d at 268, 389 N.W.2d at 23. Although there are other ways to ensure a defendant's understanding, the "less a defendant's intellectual capacity and education, the more a court should do to ensure the defendant knows and understands the essential elements of the charges." ***Brown***, 2006 WI 100, ¶52, 293 Wis. 2d at 624, 716 N.W.2d at 921. Indeed, ***Howell*** instructs that the circuit court's colloquy must go beyond asking mere "yes" or "no"-type questions: "The circuit court did not establish Howell's understanding of the information it relayed to Howell by personally questioning him. Rather than asking Howell to summarize his understanding, the circuit court asked him

questions that required simple 'yes' or 'no' responses." ***Howell***, 2007 WI 75, ¶¶52–53, 301 Wis. 2d at 376, 734 N.W.2d at 61 ("As we explained in ***Bangert***, '[a] defendant's mere affirmative response that he understands the nature of the charge, without establishing his knowledge of the nature of the charge, submits more to a perfunctory procedure rather than to the constitutional standard that a plea be affirmatively shown to be voluntarily and intelligently made.") (citation omitted, brackets in ***Howell***).

¶14 ***Howell***'s admonition is especially pertinent in cases where a defendant's cognitive abilities are substantially impaired, as they are here; a circuit court must take extra steps *to make sure* the defendant understands all the things that underlie a valid guilty or no-contest plea. The circuit court did not do that here; most of its questions to Lilek called for a "yes" or "no" answer. And when the circuit court's question did not call for a "yes" or "no," Lilek's non-responsive comments exposed his apparent lack of understanding:

- When the circuit court attempted to tell Lilek about the potential length of sentence that could be imposed, he answered: "Yes, but I spent 20 months here also."

- When, the circuit court asked Lilek about taking his medication, he gave several non-responsive answers:

  "CIRCUIT COURT: So when's the last time you took your medications?

  THE DEFENDANT: Last night I was notified to, but, and I saw a nurse today."

"THE COURT: Okay. And what, do you remember what you take?
THE DEFENDANT: I don't drink alcohol. I am not quite sure about that. I don't know how to describe that because I don't know."

- Lilek also seemed not to know that he was pleading "no contest" rather than "guilty."

"THE COURT: All right. So Mr. Lilek, I understand that you are going to be entering two guilty pleas today. Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

MR. KOHN: Actually, Your Honor, they're going to be no contest.

THE COURT: They're two no contest pleas, right, Mr. Lilek?

THE DEFENDANT: I said yes, Your Honor."

Further, despite the length of time Lilek's lawyer said that he and his intern spent with Lilek explaining things, Lilek told the circuit court that he believed that the maximum fine the court could impose "was $5,000."

¶15 Lilek's non-responsive answers, together with the history of his severe and significant cognitive disabilities were blazing red flags that should have triggered the circuit court's extra vigilance to make sure Lilek *really* understood what was happening and that he was not just repeating what he either believed or was told he should say. Thus, the circuit court's assertion in its written decision:

"There is no indication at the plea hearing that the defendant was confused or did not understand what the court said to him" is not supported by the Record. As we have seen, ***Howell*** emphasized the "paramount importance" of making sure the "plea hearing colloquy [is] not … reduced to a perfunctory exchange," and "the importance of the trial court's taking great care in ascertaining the defendant's understanding of the nature of the charges and the constitutional rights being waived." ***Howell***, 2007 WI 75, ¶71, 301 Wis. 2d at 383, 734 N.W.2d at 65 (quotation marks, citation and footnote omitted). The Record here shows that the circuit court did exactly what ***Howell*** warned against: it engaged in a "perfunctory exchange" and did not take the required "great care" to ensure this cognitively disabled, legally blind, child-like man understood what was going on and what he was doing. Further, ***Bangert***, warns that the "[d]efense counsel may not speak for the defendant; the defendant must affirmatively state his own knowledge and understanding when he is capable of doing so." ***Bangert***, 131 Wis. 2d at 270, 389 N.W.2d at 24. Accordingly, the circuit court erroneously relied on Kohn's statement that Lilek understood what he was doing instead of getting that information directly from Lilek, as ***Bangert*** requires.

III.

¶16 Lilek is entitled to an evidentiary hearing on his motion to withdraw his pleas. *See* ***Howell***, 2007 WI 75, ¶¶88–89, 301 Wis. 2d at 392, 734 N.W.2d at 69. Accordingly, we reverse the circuit court's order denying Lilek's motion for postconviction relief, and remand this matter for further proceedings.

By the Court.—Order reversed and cause remanded for further proceedings.

Publication in the official reports is not recommended.