

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 5, 2015

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 Nos. 2014AP1754-CR
2014AP1755-CR
2014AP1756-CR
2014AP1757-CR**

**Cir. Ct. Nos. 2011CF894
2012CM1674
2013CF400
2013CF983**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DELILAH L. MCKINNEY,

DEFENDANT-APPELLANT.

APPEALS from judgments and an order of the circuit court for Brown County: MARC A. HAMMER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Delilah McKinney appeals judgments convicting her of eight crimes and an order denying her postconviction motion to withdraw her no contest pleas. The circuit court denied the postconviction motion without

an evidentiary hearing. McKinney contends she is entitled to withdraw her pleas or have an evidentiary hearing because the court failed to inform her that fines could have been imposed for these offenses. We affirm the judgments and order.

¶2 At the plea hearing, McKinney told the court she carefully reviewed the plea questionnaire form and understood everything on the form. The form included a correct summary of the potential penalties including the potential fines. However, during the plea colloquy the court did not mention any possible fines when it summarized the potential penalties. The court imposed substantial consecutive sentences, but imposed no fines.

¶3 McKinney filed a postconviction motion to withdraw her no-contest pleas based on the court's failure to mention potential fines during the plea colloquy. She filed an affidavit asserting she did not know the potential penalties included fines. The circuit court denied the motion and declined to take any testimony, stating it was unaware of any statute or case law requiring the court to review the maximum fine with a defendant. The court also noted the criminal complaints and plea questionnaire listed the maximum fines, and the parties had not contemplated a fine as a part of their plea agreement.

¶4 A defendant seeking to withdraw pleas after sentencing must establish a manifest injustice. *State v. Cross*, 2010 WI 70, ¶42, 326 Wis. 2d 492, 786 N.W.2d 64. A manifest injustice occurs when there has been a “serious flaw in the fundamental integrity of the plea.” *Id.* The court's failure to mention potential fines during the plea colloquy when no fines were contemplated by the parties and none imposed by the court does not meet that standard. McKinney's assurance that she reviewed and understood the plea questionnaire, which included

mention of potential fines further diminishes the significance of the court's failure to mention fines during the colloquy.

¶5 The court was not required to conduct an evidentiary hearing because none is required for “every small deviation from the circuit court’s duties during a plea colloquy.” *Id.*, ¶32. As the court noted in *Cross*, “The *Bangert* requirements exist as a framework to ensure that a defendant knowingly, voluntarily, and intelligently enters [her] plea. We do not embrace a formulistic application of the *Bangert* requirements that would result the abjuring of a defendant’s representations in open court for insubstantial defects.” *Id.* In *State v. Taylor*, 2013 WI 34, ¶¶35-39, 347 Wis. 2d 30, 820 N.W.2d 482, the Wisconsin Supreme Court concluded no evidentiary hearing was required even when the court misinformed a defendant of the maximum penalty by omitting a penalty enhancer because the criminal complaint, information and plea questionnaire contained the complete and accurate explanation about the maximum penalty. A defendant’s failure to understand the precise maximum sentence is not a per se due process violation. *Id.*, ¶32. Here, the court’s omission of any mention of a fine did not mislead McKinney, induce improvident no contest pleas, or create a manifest injustice.

By the Court.—Judgments and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

