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DISTRICT IV

October 9, 2025

To:

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Circuit Court Judge
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Clerk of Circuit Court
Rock County Courthouse
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Daniel J. O'Brien
Electronic Notice

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

2024AP1431-CR

State of Wisconsin v. Journee R. Weathers, Jr. (L.C. # 2021CF544)

Before Graham, P.J., Blanchard, and Taylor, JJ.

Summary disposition orders 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).

Journee R. Weathers, Jr. appeals a judgment of conviction for first-degree reckless homicide and an order denying his postconviction motion for plea withdrawal. Weathers argues that he must be permitted to withdraw his guilty plea to avoid a manifest injustice. Specifically, he asserts that the circuit court failed to establish a sufficient factual basis for his plea and that his trial counsel provided ineffective assistance at sentencing. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24). Because neither of Weathers' arguments merit plea withdrawal, we summarily affirm.

After initially being charged with first-degree intentional homicide as a party to the crime, Weathers pled guilty to the amended charge of first-degree reckless homicide. During the plea hearing, the parties stipulated that the “probable cause” section of the complaint and the testimony at the preliminary hearing provided the factual basis for the plea. According to the complaint, Weathers and another man accompanied Dontae Phiffer to the home of the homicide victim, with whom Phiffer had been in an argument. Following a scuffle, Phiffer punched the victim, causing him to fall to the ground; Weathers then used a gun that had been handed to him and shot and killed the victim while he lay on the ground.¹ The complaint also alleged that Weathers fired the gun “with intent to kill,” and trial counsel made clear that Weathers was “not pleading to any elements of intent.” However, counsel stated, “everything else in the criminal complaint [was] a factual basis” for the reckless homicide charge.

The circuit court agreed that the complaint set forth an adequate factual basis for Weathers’ plea. It accepted the plea and ordered a presentence investigation (PSI).²

At sentencing, Weathers’ trial counsel argued for a sentence of ten years of initial confinement followed by five years of extended supervision. Counsel emphasized Weathers’ remorse and acceptance of responsibility, among other mitigating factors. Then, during his allocution, Weathers apologized for his actions and stated that he was “accepting responsibility”

¹ The testimony at Weathers’ preliminary hearing was consistent with this account in all relevant respects.

² Weathers did not give a different version of the events underlying the charge against him to the drafters of either the PSI that was prepared by the state department of corrections or the alternative PSI that was prepared at the request of the defense. The PSI prepared by the department reports that Weathers stated that it was “so hard to talk about” the incident. The alternative PSI reports that Weathers’ stated that he “didn’t even think about it, and ... shot [the victim].”

for them. The circuit court remarked that trial counsel “made one of the best arguments that [the court had] heard” for a lesser sentence. However, based on the gravity of the crime and the need for punishment, the court imposed a sentence of thirty years of initial confinement followed by ten years of extended supervision.

With new counsel, Weathers filed a postconviction motion seeking to withdraw his plea. He argued that, although he “stipulated to the facts constituting the charge” when he entered his plea, “he continue[d] to maintain a complete defense to the charge”—namely, self-defense or the defense of others. Weathers filed an affidavit with his motion in which he averred that, after the victim fell to the ground, Weathers noticed that the victim was reaching around his waist area. Weathers averred that he believed the victim was reaching for a gun to shoot him or his associates, and that Weathers “fired the gun because [he] feared for [his] safety” and that of the other people nearby. Weathers also asserted ineffective assistance of trial counsel as a ground for withdrawing his plea, arguing that trial counsel performed deficiently by failing to offer as a mitigating factor at sentencing that “Weathers pulled the gun ... and fired two shots to prevent [the victim] from shooting or killing” Weathers or his associates.

The circuit court denied the motion without holding an evidentiary hearing. It explained that the complaint and the preliminary hearing transcript—which Weathers indicated he had read at his plea hearing and his counsel indicated was true except as it related to intent—set forth a factual basis for the charge of first-degree reckless homicide. The court further noted that the record as it existed at the time of the plea hearing did not provide any facts supporting self-defense or defense of others. Weathers appeals.

After sentencing, a defendant seeking to withdraw a guilty plea bears the burden of establishing by clear and convincing evidence that failure to withdraw the plea amounts to a manifest injustice. *See State v. Taylor*, 2013 WI 34, ¶48, 347 Wis. 2d 30, 829 N.W.2d 482; *State v. Thomas*, 2000 WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836. Given that the presumption of innocence no longer exists after such a plea is finalized, we will not disturb the plea unless a defendant satisfies the high standard of showing a serious flaw in its fundamental integrity. *Thomas*, 232 Wis. 2d 714, ¶16.

Demonstrating that a circuit court lacked the factual basis for the offense, as Weathers attempts to do, is one way to show a manifest injustice. *See White v. State*, 85 Wis. 2d 485, 488, 271 N.W.2d 97 (1978). The reason that a factual basis for a crime must be established at a plea hearing is to “protect a defendant who is in the position of pleading voluntarily with an understanding of the nature of the charge but without realizing that [the defendant’s] conduct does not actually fall within the charge.” *Id.* at 491 (citation omitted).

In support of his argument that a factual basis was not established here, Weathers cites cases in which “the facts relating to the defendant’s conduct remain[ed] in dispute because the circuit court failed to establish whether the underlying conduct constituted the crime to which the defendant pled guilty.” *See State v. Howell*, 2007 WI 75, ¶58, 301 Wis. 2d 350, 734 N.W.2d 48; *see also White*, 85 Wis. 2d at 490 (permitting withdrawal of guilty plea to theft of property valued over \$150 when there was “no evidence in the record which would support a finding that [the] value of the [stolen property] at the time of the theft was \$150”). Here, by contrast, there was no dispute about Weathers’ conduct or whether it satisfied the elements of the charge of first-degree reckless homicide. Weathers and his counsel stipulated to all the facts necessary to support first-degree reckless homicide when they agreed—after Weathers told the court that he

had read the complaint—that the court could “accept what is written in that document as true,” except as it related to intent. *See Thomas*, 232 Wis. 2d 714, ¶21 (“[A] factual basis is established when counsel stipulate on the record to facts in the criminal complaint.”).

Indeed, Weathers’ carve-out of the allegation that he shot the homicide victim “with intent to kill” as the one thing alleged in the complaint that he was *not* admitting supports the charge of first-degree reckless homicide and contradicts the claim of self-defense that Weathers now tries to make. *See WIS JI—CRIMINAL 805* (“The defendant may *intentionally* use force which is intended or likely to cause death or great bodily harm only if the defendant reasonably believed that the force used was necessary to prevent imminent death or great bodily harm to himself.”). Weathers does not “*continue[]* to maintain a complete defense to the charge” despite “stipulat[ing] to the facts constituting the charge,” (emphasis added) as he now asserts. Weathers did not suggest that the homicide was anything other than unintentional at the time he entered his plea, and he waived the right to argue self-defense when he decided to plead guilty to reckless homicide. *See State v. Bangert*, 131 Wis. 2d 246, 293, 389 N.W.2d 12 (1986).

Weathers’ other argument in favor of plea withdrawal is that his trial counsel’s failure to introduce the concept of self-defense as a mitigating factor at sentencing constituted ineffective assistance. He asserts that he pled facts that entitled him to an evidentiary hearing on his ineffective assistance claim, and that the circuit court erred in denying him the opportunity for an evidentiary hearing on this issue.

As a threshold matter, Weathers does not allege that his counsel’s performance was deficient before or at the plea hearing. Therefore, as the State points out, the asserted ineffective

assistance would not be a basis for plea withdrawal in any event, but rather a ground for resentencing. *See State v. Anderson*, 222 Wis. 2d 403, 408-09, 588 N.W.2d 75 (Ct. App. 1998).

Regardless of the appropriate remedy, Weathers’ allegations about ineffective assistance are insufficient to warrant an evidentiary hearing. Pursuant to the familiar two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant must establish that counsel’s performance was both deficient, falling outside the range of objectively reasonable attorney representation, and prejudicial, adversely affecting the outcome of the proceeding. *See State v. Mull*, 2023 WI 26, ¶¶35, 37, 406 Wis. 2d 491, 987 N.W.2d 707. A circuit court may deny a motion alleging ineffective assistance without holding a hearing when the motion presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief. *State v. Balliette*, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. We review de novo whether the motion sufficiently alleges both deficient performance and prejudice such that the circuit court must hold an evidentiary hearing.

Here, Weathers’ allegations are conclusory and devoid of factual or legal support. With respect to prejudice, Weathers cites a number of cases in which prejudice was presumed, but he does not explain how any of those cases are similar to his, nor does he make an argument for presumed prejudice under the facts of his case. Weathers also asserts that, “had trial counsel presented the mitigating factors [of Weathers’ asserted self-defense claim] to the court, there is a reasonable probability that ... Weathers would likely have received a lesser sentence than what he received in this case.” Yet, introducing the concept of self-defense at sentencing would have been logically inconsistent with the mitigating factors trial counsel did present, including that Weathers acted impulsively, accepted full responsibility, and was remorseful. Indeed, the circuit court characterized trial counsel’s argument for a lower sentence as “one of the best arguments

[the court had] heard.” Weathers does not explain any basis for his assertion that the introduction of a self-defense theory at sentencing would have been reasonably likely to lead to a lower sentence than the one that he received. *See Strickland*, 466 U.S. at 694 (“A reasonable probability is a probability sufficient to undermine confidence in the outcome.”).

Given his failure to adequately allege prejudice, we need not address Weathers’ allegation of deficient performance. *See Strickland*, 466 U.S. at 697 (“[T]here is no reason for a court deciding an ineffective assistance claim ... to address both components of the inquiry if the defendant makes an insufficient showing on one.”). The circuit court did not err when it denied Weathers’ request for an evidentiary hearing on the issue of trial counsel’s performance.

In sum, we conclude that Weathers has not established any basis for plea withdrawal and that the circuit court properly denied his postconviction motion without an evidentiary hearing.

IT IS ORDERED that the judgment and order of the circuit court is summarily affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals