OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III

January 13, 2026

To:

Hon. William M. Atkinson
Reserve Judge
100 South Jefferson Street
P.O. Box 23600
Green Bay, WI 54305-3600

Donald V. Latorraca
Electronic Notice

Jeremy Newman
Electronic Notice

Hon. Kendall M. Kelley
Circuit Court Judge
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

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

2024AP1982-CR State of Wisconsin v. Arturo Coronado, Sr.
(L. C. No. 2018CF758)

Before Stark, P.J., Hruz, and Gill, 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).

Arturo Coronado, Sr., appeals from a judgment convicting him of second-degree sexual assault of a child and from an order denying his postconviction motion. The sole issue on appeal is whether Coronado's trial counsel provided ineffective assistance by failing to object to two alleged breaches of the plea agreement by the State. Based upon 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).[1] We affirm on the ground that the alleged breaches were not substantial and material; therefore, counsel did not perform deficiently by failing to object to them.

The relevant facts are not in dispute. As part of the parties' plea agreement, the State agreed to cap its sentence recommendation at 10 years' initial confinement followed by 15 years' extended supervision. At the sentencing hearing, the State began its argument by stating:

> I am recommending that you send the defendant to the Wisconsin State Prison system for a period of 15 years of extended supervision—excuse me, *15 years of initial confinement*—I'm sorry, your Honor. I have those number[s] screwed up. That you send the defendant to the prison system for ten years of initial confinement, followed by 15 years of extended supervision.

(Emphasis added.) The State then asked the circuit court to adopt its recommendation, which it noted was "a long time" that would place Coronado in confinement or under supervision until he was 76 years old.

Subsequently, in the course of discussing the severity of the offense, the State reasoned:

> This type of behavior is wholly inconsistent with membership in a civilized society, and that is why I am recommending that Mr. Coronado be removed from civilized society *for at least ten years*. The severity of this offense cannot be understated, and as a Class C felony, there are very few crimes which the state considers to be more serious than this.

(Emphasis added.)

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

Then, at the conclusion of its remarks, the State argued:

> And there needs to be consequences for the defendant, and I guess I don't see any alternative to a lengthy period of incarceration. I'm asking for ten years followed by a lengthy period of supervision, I'm asking for 15 years, to carry through—the defendant through what is going—likely going to be the bulk of his natural life.

After also taking into account sentence recommendations from the victim (for the maximum sentence of 40 years' total imprisonment), the presentence investigation report agent (for 10 years' initial confinement followed by 4 years' extended supervision), and the defendant (for 5 years' initial confinement followed by up to 15 years' extended supervision), the circuit court sentenced Coronado to 12 years' initial confinement followed by 18 years' extended supervision—which was later reduced to the statutory maximum of 15 years' extended supervision.

Coronado moved for resentencing on the grounds that the State breached the plea agreement by: first, misstating its recommendation as being for 15 years' initial confinement; and second, misstating its recommendation as being for "at least" 10 years' initial confinement. Coronado acknowledged that he had forfeited direct review of these issues, but he further claimed that his trial counsel had provided ineffective assistance by failing to contemporaneously object to the alleged breaches. The circuit court denied the motion following a ***Machner***[2] hearing, at which trial counsel testified that he did not object to the first misstatement because the State immediately corrected itself and that he did not object to the second statement because he did not identify any basis to do so.

[2] ***State v. Machner***, 92 Wis 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

When a defendant forfeits direct appellate review of a breach of the plea agreement claim through a failure to timely object to the alleged breach, this court reviews the alleged breach through the framework of ineffective assistance of counsel. ***State v. Howard***, 2001 WI App 137, ¶12, 246 Wis. 2d 475, 630 N.W.2d 244. The first step in the process is to determine whether the State in fact materially and substantially breached the plea agreement because if no actionable breach occurred, trial counsel's failure to object would not constitute deficient performance. ***State v. Sprang***, 2004 WI App 121, ¶13, 274 Wis. 2d 784, 683 N.W.2d 522.

A "material and substantial breach" is one that "defeats the benefit for which the accused bargained." ***State v. Williams***, 2002 WI 1, ¶38, 249 Wis. 2d 492, 637 N.W.2d 733. An otherwise material breach may be cured when the prosecutor immediately and unequivocally retracts the error, which renders the breach immaterial. ***State v. Nietzold***, 2023 WI 22, ¶¶10, 14, 406 Wis. 2d 349, 986 N.W.2d 795. This court independently determines whether a material and substantial breach has occurred. ***State v. Duckett***, 2010 WI App 44, ¶6, 324 Wis. 2d 244, 781 N.W.2d 522.

Here, the State cured the first alleged breach of the plea agreement by immediately correcting its misstated recommendation of 15 years' initial confinement to the agreed-upon 10 years' initial confinement. The prompt correction rendered that breach immaterial.

Next, the second alleged breach did not technically misstate the terms of the plea agreement because it did not call for at least 10 years of *initial confinement* but, rather, the agreement called for at least 10 years of *removal from society* during the recommended sentence, which also included a 15-year term of extended supervision. By statute, the entire term of extended supervision may ultimately be used for reconfinement in the event that extended

supervision is revoked. *See* WIS. STAT. §§ 302.113(3), 973.01(8)(a)4. It is therefore axiomatic that every defendant must serve *at least* the initial confinement portion of a bifurcated sentence. The State's comment could be reasonably understood that way.

Even if the State's comment could be alternatively construed to suggest a minimum 10-year term of initial confinement rather than a maximum 10-year term of initial confinement, we agree with the circuit court that the State was merely emphasizing that Coronado deserved the maximum amount of initial incarceration per the parties' agreement.

Further, the State again cured any error with its final comments, which once again correctly stated its agreed-upon recommendation. Given the entire context of the State's argument—which also included the State's argument as to why a 10-year period of initial confinement was warranted—we are not persuaded that Coronado was deprived of the benefit of his bargain by the State's "at least" comment.

We therefore conclude that no material and substantial breach of the plea agreement occurred. It follows that Coronado's counsel did not perform deficiently by failing to object. In light of that conclusion, we need not address the parties' additional arguments regarding prejudice.

Upon the foregoing,

IT IS ORDERED that the judgment and order are summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals