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DISTRICT III

September 1, 2026

To:

Hon. Donald R. Zuidmulder
Circuit Court Judge
Electronic Notice

Carlos Bailey
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Anne Christenson Murphy
Electronic Notice

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

2025AP11-CR

State of Wisconsin v. John Arthur Joseph Clark
(L. C. No. 2022CF940)

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).

John Clark appeals from a judgment convicting him of second-degree sexual assault of a child and from an order denying his postconviction motion for plea withdrawal. The sole issue on appeal is whether Clark was entitled to an evidentiary hearing on his plea withdrawal motion. 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

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

the grounds that the plea colloquy was adequate and Clark failed to allege sufficient facts to establish a genuine misunderstanding of the charge to which he pled.

In order to withdraw a plea after sentencing, a defendant must either show that the plea colloquy was defective and the defendant did not understand information that was supposed to have been provided, *State v. Bangert*, 131 Wis.2d 246, 274, 389 N.W.2d 12 (1986), or demonstrate a manifest injustice such as coercion, an insufficient factual basis to support the charge, ineffective assistance of counsel, a failure by the prosecutor to fulfill the plea agreement, or some other issue affecting the “fundamental integrity” of the plea, *State v. Krieger*, 163 Wis. 2d 241, 249-54 & n.6, 471 N.W.2d 599 (Ct. App. 1991).

A defendant who asserts that the procedures outlined in WIS. STAT. § 971.08 or other court-mandated duties were not followed at the plea colloquy (i.e., a *Bangert* violation), and who further alleges that he or she did not understand the omitted information is entitled to an evidentiary hearing on his or her plea withdrawal motion. *State v. Hampton*, 2004 WI 107, ¶¶46, 56-65, 274 Wis. 2d 379, 683 N.W.2d 14. A defendant who seeks to withdraw his or her plea on grounds constituting a manifest injustice other than a *Bangert* violation need only be given an evidentiary hearing when the motion alleges facts which, if true, would entitle the defendant to relief. *State v. Bentley*, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996). No hearing is required, though, when the defendant presents only conclusionary allegations, or the record conclusively demonstrates that the defendant is not entitled to relief. *Nelson v. State*, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972).

We will review the circuit court’s decision to deny a plea withdrawal motion without an evidentiary hearing under the de novo standard, independently determining whether the facts

alleged would establish the denial of a constitutional right sufficient to warrant the withdrawal of the plea as a matter of right. **Bentley**, 201 Wis. 2d at 308-10.

Here, Clark alleged in his postconviction motion that the circuit court failed to ascertain that Clark understood the maximum available penalties for second-degree sexual assault of a child and that Clark did not, in fact, know what the maximum available penalties were until after he had entered his plea. The record shows that the court correctly stated the penalties at the beginning of the plea hearing, but it did not explicitly ask Clark during the ensuing plea colloquy whether Clark understood those penalties. The court did, however, ask Clark whether he had any questions about the crime to which he was entering a plea or about what was going on at the plea hearing. We conclude that the court's colloquy was not deficient, that Clark failed to make a prima facie case for a **Bangert** violation, and that the court therefore did not err by denying Clark an evidentiary hearing on his postconviction motion.

To the extent that Clark's motion could be construed to raise a **Bentley** claim of manifest injustice, Clark failed to allege sufficient facts to show that he had a genuine misunderstanding of the consequences of his plea. Specifically, he did not allege what he thought the punishment range was or explain how he came to have any misunderstanding of the maximum available penalties, which were correctly set forth in the complaint and information and which Clark's counsel informed the circuit court at the initial appearance that Clark understood—even before the court correctly advised Clark of them at the plea hearing.

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