

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2026

Samuel A. Christensen
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 No. 2024AP60-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2019CF929

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARY BRADLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: CARRIE A. SCHNEIDER, Judge. *Affirmed.*

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

Per curiam opinions 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).

¶1 PER CURIAM. Cary Bradley appeals from a judgment convicting him of second-degree sexual assault of a child in violation of WIS. STAT.

§ 948.02(2) (2023-24).¹ Bradley argues that the circuit court erroneously exercised its discretion in multiple ways by denying his presentence motion to withdraw his no-contest plea. Bradley raised two “fair and just reasons” to withdraw his plea, which the court found were not credible—first, pressure from his family to plead, despite his purported desire to go to trial, and, second, his confusion over the nature of the count to which he had just pled. Based on the circuit court’s factual findings, we disagree with Bradley and affirm.

BACKGROUND

¶2 Bradley was charged with the repeated sexual assault of an eleven-year-old girl between February and October 2019. According to the criminal complaint, the victim alleged that Bradley—who was then 52—sexually abused her multiple times during a 9-month period when they lived in the same home.

¶3 Bradley and the State eventually reached a plea deal. In exchange for Bradley’s no-contest plea, the State agreed to give Bradley the option of choosing one of the two following sentencing recommendations: (1) the State would recommend six years of initial confinement and would be free to argue as to the terms and length of extended supervision, and the defense would be free to argue; or (2) the State would argue for a sentence without a specific recommendation in terms of confinement, and the defense would be free to argue. Bradley signed a Plea Questionnaire/Waiver of Rights form, which stated that he would plead no contest to the charge of second-degree sexual assault of a child

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

under the age of 16. On the form, Bradley acknowledged that he was entering his plea of his “own free will,” that he was not threatened to enter his plea, and that no promises were made to him “other than those contained in the plea agreement.” Bradley also acknowledged that he had reviewed the form and any attachments with his attorney and that he had “answered all questions [in the form] truthfully.”

¶4 On April 6, 2022, Bradley filed the form with the circuit court at a plea hearing the court held that morning. The court engaged Bradley in a colloquy, during which it explained, among other things, that he was admitting to second-degree sexual assault of a child under the age of 16 by entering his no-contest plea. At that point, the court, the prosecutor, Bradley, and his counsel discussed the nature of the charge—including that it required either sexual contact or sexual intercourse—and Bradley referred to his and his family’s concerns over his ability to have a fair trial. During this exchange, Bradley stated that as a result of those concerns, he would be “willing to plead no contest to sexual contact,” and the State suggested that the information be amended to note that Bradley would be pleading to having committed the offense by sexual contact rather than by sexual intercourse. Throughout the colloquy, Bradley mentioned concerns over what effect his going through a trial would have on his family, which the court addressed in various ways.

¶5 During the colloquy, the circuit court remarked that Bradley had been “intelligent,” “thoughtful,” “serious” and “participatory” throughout the proceedings of his case. When the court asked Bradley whether “anyone made any promises or threats to you in order to get you to enter this plea,” Bradley answered, “Well, ... only the threat of losing ... these charges.” At the conclusion of the colloquy, Bradley stated he did not need more time to talk to his attorney and that he wanted to move forward with the plea. The court ultimately accepted

Bradley’s no-contest plea, and it found, and Bradley’s counsel agreed, that Bradley had entered his plea freely, voluntarily and intelligently. The plea hearing concluded at 10:53 a.m.

¶6 After Bradley left the hearing, he drafted a letter to the circuit court’s attention seeking to withdraw his no-contest plea, which he then mailed to his attorney, Jason Farris. The letter was dated April 6, 2022, the same date as the plea hearing; indeed, it noted a time of 11:30 a.m.—only 37 minutes after the hearing had concluded. In the letter, Bradley made two sets of assertions: (1) “[He] was not being truthful in answering the plea question^[2] and explanation to the plea agreement”; and (2) “When the agreement was in writing [he] started to have a panic attack,” and all he could think about were the discussions between himself and his family as to “how no one believes that [he] would get a fair trial” and “how hard the trial would be for [his] mother[,] ... wife[,] and [the wife’s] family.” The letter concluded with Bradley requesting to “withdraw [his] [no-contest] plea and enter [a] not guilty” plea.

¶7 Prior to sentencing and through new counsel, Bradley moved to withdraw his plea.³ The circuit court held an evidentiary hearing on the motion, at which Attorney Farris and Bradley testified. In general, Bradley testified

² It is unclear whether Bradley was referring to the plea questionnaire, to the plea colloquy, or to both. For purposes of this appeal, that ambiguity does not matter.

³ In his brief-in-chief, Bradley states, “On April 29, 2022, trial counsel, Attorney Jason Farris, filed a motion to withdraw [as Bradley’s counsel]. In it he alleged that ‘defendant has advised counsel that he wishes to withdraw his plea.’” There is no record citation in support of these statements and those that follow. We remind Bradley’s appellate counsel that our Rules of Appellate Procedure require factual assertions be supported by citations to the record. *See* WIS. STAT. RULE 809.19(1)(d). It is clear, however, from other documents in the record and the full litigation of the plea withdrawal motion that occurred—including now on appeal—that everyone understands there was such a motion.

consistent with his April 6 letter and about discussions he had with Farris regarding a plea deal. Bradley also acknowledged that his family was split on the issue of whether he should accept a plea deal or go to trial.

¶8 Attorney Farris testified about the plea negotiations, his discussions with Bradley regarding them, and his impressions of Bradley's understanding of the plea offers and the charge against him (both of which Farris consistently said Bradley understood). Farris also testified to his understanding of Bradley's family's impact on Bradley's decision to plead no contest. While he acknowledged that there may have been some discussions with individual family members about whether to visit Bradley in prison if he were convicted or whether he would receive a fair trial, Farris testified, "I wouldn't say [he was] pressured by family. I think they might have had somewhat different opinions, but nothing that he described to me that I would describe as pressured to enter the plea."

¶9 The circuit court later made an oral ruling denying Bradley's motion to withdraw his plea. In doing so, the court reviewed the relevant case law; the parties' arguments; and the case record, including the plea hearing and other discussions dealing with the plea, the offense, and the penalty range Bradley faced. It is undisputed that the court said it was applying the correct "fair and just reason" standard in weighing whether it should permit the withdrawal of Bradley's plea presentencing, and the court correctly noted that the burden rested with Bradley to show, by a preponderance of the evidence, that a fair and just reason for plea withdrawal existed.

¶10 The circuit court then made its findings. First, the court stated that the plea hearing and the testimony from the evidentiary hearing showed that Bradley understood the plea offer at the time he entered his plea. The court found

that Bradley had been “engaged” during the plea hearing, that he had wanted to plead to “sexual contact” rather than “sexual intercourse,” and that the court explained the maximum penalties to Bradley when he had questions about them. Second, as to Bradley’s claim that he felt pressured by his family and that, therefore, his plea was involuntary, the court found that Attorney Farris “did not characterize the influence as pressure.” And while the court noted that pressure from a family was present in every single case where someone is charged, it determined that there was “nothing in the record to indicate that ... any coercion or pressure” occurred between Bradley and his family that could present a “just or fair reason to allow withdrawal of the plea.” The court concluded that Bradley had not met his burden and denied his motion.

¶11 Bradley was sentenced to ten years of initial confinement—which exceeded both parties’ respective recommendations of six and four years—and eight years of extended supervision. Bradley now appeals, challenging the denial of his presentence motion to withdraw his no-contest plea. Additional facts will be provided below as necessary.

DISCUSSION

¶12 While “[w]ithdrawal of a guilty plea before sentencing is not an absolute right,” a “circuit court should ‘freely allow a defendant to withdraw his [or her] plea prior to sentencing for any fair and just reason, unless the prosecution [would] be substantially prejudiced.’” *State v. Lopez*, 2014 WI 11, ¶61, 353 Wis. 2d 1, 843 N.W.2d 390 (third alteration in original; citations omitted); *see also State v. Shanks*, 152 Wis. 2d 284, 288, 448 N.W.2d 264 (Ct. App. 1989) (stating that the “fair and just” standard’s “liberal application effects efficient administration of criminal justice by reducing appeals contesting the knowing and

voluntariness of a guilty plea and avoids the difficulties of disentangling such claims”). Although plea withdrawal should be freely allowed before sentencing, “freely” does not mean automatically. *State v. Garcia*, 192 Wis. 2d 845, 861, 532 N.W.2d 111 (1995). “The burden is on the defendant to prove a fair and just reason for withdrawal of the plea by a preponderance of the evidence.” *Id.* at 862. A fair and just reason requires the showing of some adequate reason for the defendant’s change of heart, other than a mere desire to have a trial. *State v. Bollig*, 2000 WI 6, ¶29, 232 Wis. 2d 561, 605 N.W.2d 199.

¶13 A proffered reason must be supported by the evidence of record. *Shanks*, 152 Wis. 2d at 290. In other words, the defendant must do more than allege a fair and just reason; he or she must show that the reason actually exists. *State v. Kivioja*, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999). Furthermore, the circuit court must find credible the defendant’s proffered fair and just reason, and it must actually believe that the fair and just reason exists. *State v. Jenkins*, 2007 WI 96, ¶43, 303 Wis. 2d 157, 736 N.W.2d 24. As relevant here, in determining whether there is a fair and just reason, courts should discern if there is evidence of a genuine misunderstanding of a plea’s consequences, hasty entry of a plea, confusion on the defendant’s part, or coercion by trial counsel, and courts should also consider whether the plea withdrawal motion “was expeditiously brought.” *Shanks*, 152 Wis. 2d at 290. Additionally, courts should consider evidence of a defendant’s misunderstanding or changed circumstances due to matters outside of the plea colloquy and evidence of reasons “why it is fair and just to disregard the solemn answers the defendant gave in the colloquy.” See *Jenkins*, 303 Wis. 2d 157, ¶62; see also *United States v. Lopez*, 385 F.3d 245, 255 (2d Cir. 2004) (explaining that the federal “fair and just reason” standard for plea withdrawal requires a court to ask whether there is “evidence that the defendant did not freely

and voluntarily enter into the plea agreement, either because he [or she] was coerced or improperly induced to accept its terms, or because he [or she] misunderstood them”).

¶14 We will sustain a circuit court’s decision to deny a presentence motion to withdraw a plea unless the court erroneously exercised its discretion. *Jenkins*, 303 Wis. 2d 157, ¶30. “All that ‘this court need find to sustain a discretionary act is that the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.’” *Id.* (citation omitted). “This discretion gives the circuit court latitude in assessing the defendant’s reason [for requesting a plea withdrawal] and determining whether it is fair and just under the circumstances.” *Id.*, ¶29. Importantly, this discretion includes the circuit court’s determination of whether a defendant’s reason adequately explains his or her change of heart. *Id.*, ¶31.

¶15 As best we can tell, Bradley presents five reasons for why the circuit court erroneously exercised its discretion by denying his presentence motion to withdraw his no-contest plea: (1) the State would suffer no prejudice by allowing him to withdraw his plea; (2) the court never considered the fact that Bradley filed his request the same day that he entered his no-contest plea, meaning it was “expeditiously brought” under the case law, see *Shanks*, 152 Wis. 2d at 290; (3) the facts—most notably, Bradley’s testimony at the evidentiary hearing—supported Bradley’s claim that his family had pressured him, even though Attorney Farris was unaware of the pressure; (4) the fact that the court recognized that families commonly impact a defendant’s consideration of whether to plead guilty does not make his family’s pressure irrelevant; and (5) although the court had thoroughly explained the plea, Bradley did additional research shortly after the

plea colloquy, “which confused and frightened him” over the charge to which he had just pled. Based on the foregoing, Bradley claims that the court erred by disregarding the requirement that it take a liberal view, rather than a rigid view, of the reasons given for plea withdrawal.⁴

¶16 We address each of the foregoing arguments,⁵ explaining how, both individually and collectively, they do not entitle Bradley to the relief he seeks, especially given the circuit court’s factual findings. In particular, and fundamentally, Bradley’s appellate arguments run headlong into the court’s determination that Bradley’s alleged reasons for seeking to withdraw his no-contest plea were not credible.⁶ Ultimately, the record supports the court’s

⁴ Bradley concedes that the plea colloquy itself was sufficient.

⁵ We agree with the State that some of Bradley’s arguments are largely undeveloped, especially in his brief-in-chief.

⁶ In his reply brief, Bradley misunderstands the State’s point that “[c]ourts are presumed to consider all evidence presented to them unless explicitly stated otherwise. Silence does not equal no consideration.” (Footnote omitted.) While it would have behooved the State to include a citation in support of this proposition after these sentences, Bradley’s concerns miss the mark. Namely, it is well established that

under the erroneous exercise of discretion standard of review, the reviewing court upholds the circuit court’s factual and credibility determinations if there is support for them in the record. Moreover, even if the circuit court misapplies the law or inadequately explains the reasons for its decision, the reviewing court must independently review the record to find support for the circuit court’s decision if the justification is there.

State v. Jenkins, 2007 WI 96, ¶46, 303 Wis. 2d 157, 736 N.W.2d 24.

Accordingly, even if the circuit court did not expressly refer to certain evidence, we *are* able to assume that the court considered it if the evidence supports its factual and credibility findings. This evidence includes Bradley’s letter drafted shortly after he pled no contest and Bradley’s testimony about his brother’s alleged “threat” of not “be[ing] there” for Bradley if he went to trial.

determination that Bradley understood the relevant matters at the time of his plea, including the nature of the charge and the consequences of his plea, and that Bradley was neither confused, pressured nor coerced when he entered his plea. These findings are not clearly erroneous, and we cannot reweigh the evidence ourselves under our standard of review. See **Dickman v. Vollmer**, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202. Accordingly, Bradley did not meet his burden of proof, even with the presumption in favor of granting presentencing plea withdrawal.

¶17 First, as to prejudice, Bradley is correct in that there seems to be no discernible prejudice to the State upon his plea withdrawal motion being granted, and the State does not argue there is any prejudice. The problem, however, is that proof of substantial prejudice to the State is necessary in order to defeat a motion for plea withdrawal *only if* the defendant has first proven a fair and just reason for plea withdrawal. See **Bolig**, 232 Wis. 2d 561, ¶34 (“[O]nce the defendant presents a fair and just reason, the burden shifts to the State to show substantial prejudice so as to defeat the plea withdrawal.” (emphasis added)). Given the circuit court’s determination that Bradley failed to show a fair and just reason, whether there would be any prejudice to the State is immaterial.

¶18 Second, regarding the circuit court’s allegedly insufficient consideration of Bradley having expeditiously filed his request for plea withdrawal on the same day that he entered a plea, Bradley’s argument simply begs the question. That is, we do not know the actual degree to which the court considered the fact of Bradley’s expeditious filing, only that the court did not expressly reference it on the record. In any event, while that fact is relevant and militates in Bradley’s favor, see **Shanks**, 152 Wis. 2d at 290 (“A swift change of heart is itself strong indication that the plea was entered in haste and confusion.” (citation

omitted)), it is not dispositive of whether there was a genuine fair and just reason presented. Again, the circuit court must still believe the alleged reasons. See *Jenkins*, 303 Wis. 2d 157, ¶43. Furthermore, as the State asserts, it is just as reasonably likely that the immediacy of Bradley’s plea withdrawal request—memorialized in a letter drafted within an hour of entering his plea, after he allegedly completed legal research that suddenly caused him to question his understanding of a plea made shortly beforehand—actually makes his claim less credible, and instead supports the notion that his desire to withdraw his plea was merely due to a change of heart without an adequate reason.

¶19 Third, Bradley’s claim that his family pressured him to plead no contest is not nearly as clear as he maintains. At most, Bradley’s and Attorney Farris’s testimony at the evidentiary hearing established that Bradley’s brother stated he might only support Bradley in prison if he pled,⁷ that his mother worried about Bradley’s exposure to a 25-year sentence if he went to trial, that she also was in favor of him going to trial, and that other family members thought he might not receive a fair trial. We agree with the circuit court that these concerns for Bradley do not rise to the level of coercion necessary to invalidate Bradley’s plea, even presentencing. Moreover, Bradley himself admitted that while his brother wanted him to plead, his mother actually wanted him to go to trial, and the court

⁷ According to Bradley’s testimony at the evidentiary hearing, his brother told him “that if I accept the plea, then he would be able to ... make sure I am okay and take care of me. If I have to do some time, then he would be there,” but “he would make it easier if I didn’t go to trial.” The circuit court would not have clearly erred by rejecting the notion, advanced by Bradley on appeal, that this exchange constitutes “a clear threat of being cut off from at least part of his family.”

relied on his testimony in that regard.⁸ Finally, the court credited Farris’s testimony that he did not perceive that Bradley pled due to pressures from his family but, rather, that there were differences of opinion among the family members.⁹ In short, nothing in the record causes us to conclude that the court erred by finding that Bradley’s plea was not entered due to family pressures.

¶20 Fourth, and related to the prior argument, Bradley faults the circuit court for relying on the fact that families often figure in a defendant’s consideration of whether to plead or go to trial, and he argues that general proposition does not make his family’s pressure in this case irrelevant. Bradley’s argument is correct, in part, but it ignores that the court did not categorically state that undue pressure from family members to plead guilty can never be a basis for presentence plea withdrawal. The court only said that “in every single case where someone is charged with an offense, they may discuss the case with family members or friends, and there might be some pressure from a family or discussions, and worry about, ‘If I do this, what’s my family going to think?’” This statement is reasonable. And, as the record reflects and was discussed above,

⁸ Bradley parses testimony from the evidentiary hearing regarding his mother’s thoughts on Bradley going to trial versus pleading no contest. He notes that while Attorney Farris stated that Bradley’s mother “was merely ‘sort of leaning towards going to a trial,’” according to Bradley, she also expressed “that she was worried that if he got a 25-year sentence ‘I would never see her again.’” Be that as it may, it only goes to underscore that there was not clear pressure from Bradley’s family to plead rather than go to trial. We also take this moment to note that none of Bradley’s family members testified at the evidentiary hearing as to what, if anything, they actually said to Bradley about his decision.

⁹ While Bradley maintains that “there was no testimony from [his] counsel or [himself] that counsel was present when ... Bradley’s family pressured him to enter a plea,” he could have but did not assert this fact for the circuit court to consider. And, even if we accept the fact as true, it does not make any court finding based, in part, on counsel’s testimony clearly erroneous.

there was at least some divergence of family members’ opinions over the costs and benefits of Bradley pleading no contest.

¶21 Again, the circuit court was well within its discretion to conclude that to the extent some “pressure” from family members existed, it was neither uniform nor undue. Bradley’s argument in this regard essentially asks us to substitute our assessment of the relevant evidence, including his and his trial counsel’s credibility, for the circuit court’s assessment. We are not permitted to do so. See *Dickman*, 303 Wis. 2d 241, ¶14 (stating that, on appeal from a circuit court’s decision following an evidentiary hearing, “[w]e do not reweigh the evidence or reassess the witnesses’ credibility”).

¶22 Fifth, Bradley asserts that while he ultimately understood his plea at the time he entered it, he should be able to withdraw the plea based upon confusion about it created by research he conducted immediately after he entered the plea. We agree with the State that this confusion, if any, was self-imposed, subjective, and after the fact. See *State v. Goyette*, 2006 WI App 178, ¶¶29-31, 296 Wis. 2d 359, 722 N.W.2d 731.¹⁰ More importantly, the circuit court found that Bradley did understand the plea agreement and that his plea was voluntary, intelligent and intentional. In other words, the court found that Bradley’s confusion was not real. Rather, as the court explained, Bradley understood that he

¹⁰ While Bradley takes issue with the State’s argument in this regard because both *State v. Goyette*, 2006 WI App 178, 296 Wis. 2d 359, 722 N.W.2d 731, and the cases on which it relied involved postsentence motions for plea withdrawal, the cited authority is still relevant. The principle articulated was that things such as a defendant’s psychological needs, the urgings of family members, and religious scruples do not render a defendant’s guilty plea involuntary. *Id.*, ¶¶29-31. This notion, especially combined with the relative insignificance of the family’s statements in this case, does support a conclusion that Bradley failed to show a fair and just reason for plea withdrawal.

was pleading to sexual contact as opposed to intercourse. The court also noted that it reviewed the maximum penalties with Bradley twice during the colloquy. The court credited Attorney Farris’s testimony that he and Bradley had multiple discussions regarding the plea, and Bradley never told Farris that he did not understand the plea or the agreement. As such, by arguing that “although the court found that [Bradley] should not be confused, he was in fact confused,” Bradley is again asking that we substitute our assessment of the case for the circuit court’s assessment, which we cannot do. See *Dickman*, 303 Wis. 2d 241, ¶14.

¶23 Contrary to Bradley’s assertion, this case is not at all similar to *Libke v. State*, 60 Wis. 2d 121, 208 N.W.2d 331 (1973). In that case, the sole issue was whether the manifest injustice standard that applies to plea withdrawal motions after sentencing also applies to plea withdrawal motions before sentencing. *Id.* at 124. Our supreme court determined that the circuit court erred by applying the manifest injustice standard to a plea withdrawal motion filed presentencing, stating that a less-demanding “fair and just” standard applied. *Id.* at 128. Based upon the record, the court concluded that the defendant had shown a fair and just reason for plea withdrawal by virtue of his claims that “it was never his intention to plead guilty,” “that things were happening ‘too darn fast,’” “that [it

was] out of confusion he agreed to make such a plea,” and that his “attorney talked him into the plea by promising to see that he received ‘help.’”¹¹ *Id.* at 129.

¶24 Here, the circuit court found that Bradley was not, in fact, confused and that Attorney Farris did not mislead him. We have already concluded that those findings are not clearly erroneous. The court also stated the correct legal standards for addressing Bradley’s presentence motion for plea withdrawal, see *supra* ¶9, and we perceive no basis on which to conclude it did not apply those standards. Bradley simply disagrees with *how* the court applied the applicable standards, and he is wrong that the court did not apply the correct law.

¶25 In sum, while Bradley’s allegations of confusion about the plea and undue pressure as the result of his family members’ concerns, if true, may have constituted a fair and just reason for him to seek plea withdrawal presentencing, the circuit court found those reasons incredible. In the absence of viable credible confusion or undue pressure claims, Bradley’s motion merely showed a change of heart. Our review of the record—including especially the plea hearing—and the parties’ appellate arguments gives us no reason to deem the court’s relevant findings clearly erroneous. As such, we affirm Bradley’s judgment of conviction.

¹¹ Our supreme court in *Libke v. State*, 60 Wis. 2d 121, 129, 208 N.W.2d 331 (1973), conducted an independent review of the record—analagizing its review to that which an appellate court does to determine whether the circuit court erroneously exercised its sentencing discretion—to conclude that a fair and just reason existed to withdraw the defendant’s plea presentencing. Of course, in that case, the supreme court had already concluded the circuit court applied the wrong (albeit brand new) law, which itself was an erroneous exercise of discretion. *Id.* at 128. While the court in *Libke* did not remand the case for the circuit court to apply the new rule for reviewing presentence motions for plea withdrawal, the law is quite clear that an appellate court will sustain a circuit court’s decision to deny a presentence motion to withdraw a plea unless the court erroneously exercised its discretion. *Jenkins*, 303 Wis. 2d 157, ¶30. And that is the standard of review we have applied here.

By the Court.—Judgment affirmed.

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

