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DISTRICT I

October 6, 2026

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

2025AP1188-CR

State of Wisconsin v. Thomas M. McIntyre (L.C. # 2022CF2382)

Before Donald, C.J., Colón, P.J., and Geenen, J.

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).

Thomas M. McIntyre appeals from a judgment convicting him of one count of first-degree reckless homicide and one count of second-degree reckless injury. He also appeals from the order denying his postconviction motion seeking plea withdrawal. 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

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

On June 18, 2022, the State charged McIntyre with one count of first-degree reckless homicide, one count of first-degree reckless injury, and one count of first-degree recklessly endangering safety. According to the complaint, on the night of June 15, 2022, McIntyre was operating a vehicle at a rate of 80-120 miles per hour when he crashed into a vehicle carrying two women and a four-year-old child. The child did not survive the crash and the two other occupants were severely injured. McIntyre told police that his intent was to kill himself, that he drank about eight or nine shots of alcohol prior to getting behind the wheel, and that he had no intention of hitting another vehicle. A Wisconsin Crime Lab report issued after the complaint was filed showed that McIntyre had a detectable amount of Delta-9 THC in his system at the time of the crash.

McIntyre ultimately pled guilty to one count of first-degree reckless homicide and an amended count of second-degree reckless injury. Pursuant to the plea deal, the State agreed to dismiss the first-degree reckless endangerment charge and recommend a global sentence of twenty-five to thirty years of initial confinement. The State also agreed not to charge McIntyre with any offenses related to his use of a vehicle with a detectable amount of a controlled substance in his system. The circuit court imposed concurrent sentences on the two counts resulting in twenty-five years of initial confinement and ten years of extended supervision. The court also held a restitution hearing where it ordered restitution in the amount of \$129,908.56 for one surviving victim and \$68,330.10 for the other. McIntyre was not present at the restitution hearing.

Following sentencing, McIntyre filed a postconviction motion alleging that he was entitled to withdraw his pleas on the grounds of ineffective assistance of counsel. Specifically, McIntyre alleged that his pleas were not entered knowingly, intelligently, and voluntarily

because his defense counsel failed to inform him of the possibility of requesting a lesser-included offense jury instruction on the first-degree reckless homicide charge if he took his case to trial. McIntyre also alleged that defense counsel failed to “adequately consult with” him before his restitution hearing. The postconviction court denied the motion without a hearing. This appeal follows.

On appeal McIntyre maintains his claim that defense counsel was ineffective in two ways. First, he contends that counsel failed to inform him that, had he gone to trial, he could have requested a jury instruction for second-degree reckless homicide—a lesser-included offense to first-degree reckless homicide. McIntyre contends that had he known about the possibility of requesting a lesser-included offense instruction, he would have gone to trial to minimize potential incarceration time. Second, McIntyre contends that counsel was ineffective for failing to consult with him prior to his restitution hearing. We disagree.

“The circuit court has discretion to determine whether a plea should be withdrawn[.]” *State v. Taylor*, 2013 WI 34, ¶48, 347 Wis. 2d 30, 829 N.W.2d 482. 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 id.*; *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 defendant’s counsel rendered ineffective assistance is one way to demonstrate a manifest injustice. *Taylor*, 347 Wis. 2d 30, ¶49. A defendant seeking to withdraw

a post-sentencing plea on this basis must satisfy the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). *State v. Bentley*, 201 Wis. 2d 303, 311-12, 548 N.W.2d 50 (1996). The 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. In the context of post-sentencing plea withdrawal, the prejudice prong of the test is satisfied only when the defendant shows a reasonable probability that “‘he would not have pleaded guilty and would have’” exercised the right to trial absent counsel’s errors. *Bentley*, 201 Wis. 2d at 312 (quoting *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)).

A defendant is entitled to an evidentiary hearing on a postconviction motion if “the motion on its face alleges sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Ruffin*, 2022 WI 34, ¶¶27, 35, 401 Wis. 2d 619, 974 N.W.2d 432. A motion does not entitle a defendant to relief if it contains “only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief.” *Id.*, ¶28. Whether a motion suffices to entitle a defendant to relief is a question of law that this court reviews de novo. *State v. Sulla*, 2016 WI 46, ¶23, 369 Wis. 2d 225, 880 N.W.2d 659; *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

We agree with the postconviction court that McIntyre cannot demonstrate that he was prejudiced by any alleged failure of defense counsel. McIntyre’s argument that he could have faced less incarceration time had he gone to trial ignores the benefit of the plea deal he received. McIntyre pled guilty to two crimes: (1) first-degree reckless homicide, which carries a maximum initial confinement term of forty years and a maximum extended supervision term of twenty years; and (2) second-degree reckless injury, which carries a maximum initial confinement term

of seven and one-half years and a maximum extended supervision term of five years. *See* WIS. STAT. §§ 940.02(1); 973.01(2)(b)1, (d)(1); 940.23(2)(a); 973.01(2)(b)6m., (d)4. Had McIntyre gone to trial, he would have faced the original charges: (1) first-degree reckless homicide; (2) first-degree reckless injury, which carries a maximum initial confinement term of fifteen years and ten years of extended supervision, *see* WIS. STAT. §§ 940.23(1)(a), 973.01(2)(b)4., (d)3.; and (3) first-degree reckless endangerment, which carries a maximum initial confinement term of seven and one-half half years and a maximum extended supervision term of five years, *see* WIS. STAT. §§ 941.30(1), 973.01(2)(b)6m., (d)4. McIntyre also faced an additional felony charge—use of a vehicle with a restricted controlled substance causing great bodily harm—based upon toxicology results obtained after the criminal complaint was issued. This felony also carries a maximum initial confinement term of seven and one-half years and a maximum extended supervision term of five years. *See* WIS. STAT. §§ 940.25(1)(am), 973.01(2)(b)6m., (d)4. In total, McIntyre faced seventy years of initial confinement and forty years of extended supervision—a functional life sentence.

McIntyre’s claim that a jury would have convicted him of the lesser-included second-degree reckless homicide offense is purely speculative because it assumes both that the circuit court would have given the instruction and that the jury would convicted him of the lesser-included offense. Even assuming a jury would have convicted McIntyre of the lesser-included second-degree reckless homicide offense, his incarceration exposure on that offense would have been reduced to fifteen years of initial confinement and ten years of extended supervision. *See* WIS. STAT. §§ 940.06(1); 973.01(2)(b)4, (d)(3). McIntyre still would have faced an initial confinement period of forty-five years and an extended supervision period of thirty years.

Because the plea agreement significantly reduced McIntyre's potential incarceration period, McIntyre cannot demonstrate that his counsel's performance was prejudicial.

McIntyre next contends that defense counsel was ineffective for failing to consult with him prior to his restitution hearing. McIntyre asserts that he was "[i]nexplicably" not present at the restitution hearing, and that counsel failed to discuss the victims' requested restitution amounts prior to the hearing as well as his right to contest those requests. He contends that had he been present at the hearing, he would have argued about his inability to pay the requested restitution amounts.

Defense counsel was present at the restitution hearing. Counsel did not contest the restitution amounts, but clearly told the circuit court that he did not have the authority to stipulate to those amounts on McIntyre's behalf. McIntyre contends that counsel was ineffective because he failed to inform McIntyre about his right to be present at the hearing where McIntyre would have presented testimony about his inability to pay restitution.

We note first that a defendant is not required to be present at a restitution hearing. *See* WIS. STAT. § 971.04. Rather, at a restitution hearing "[a]ll parties interested in the matter shall have an opportunity to be heard, personally or through counsel[.]" *See* WIS. STAT. § 973.20(14)(d). Counsel was present at the hearing and did not stipulate to the restitution amounts. Moreover, we agree with the postconviction court that McIntyre has not demonstrated prejudice. McIntyre's postconviction motion did not specify what evidence or argument he would have presented to demonstrate his inability to pay. In fact, the record demonstrates that the circuit court actually did consider McIntyre's diminished ability to pay, stating "so other than prison wages or if he gets lucky and receives an inheritance, he has [a] compromised ability to

pay some of the damages.” The court noted that the damages were substantial, but repeatedly stated that the restitution amounts were subject to certain offsets and that McIntyre’s ability to pay was limited. In short, McIntyre has not demonstrated that but for counsel’s alleged deficiency, the result of the restitution hearing would have been different. See *Strickland*, 466 U.S. at 694.

For the foregoing reasons, we affirm the judgment of conviction and the order denying McIntyre’s motion for postconviction relief.

Therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. See 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