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DISTRICT I

October 20, 2026

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County Safety Building
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Daniel J. O'Brien
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You are hereby notified that the Court has entered the following opinion and order:

2025AP831-CR

State of Wisconsin v. Tyrun Tyshon Montrie
(L.C. # 2016CF5470)

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).

Tyrun Tyshon Montrie appeals a judgment of conviction entered after a jury found him guilty of three felonies. He also appeals an order that denied his motion for postconviction relief. He contends that the circuit court erroneously advised the parties about the circumstances under which a defendant may enter a no-contest plea and that the error likely impacted him adversely in various ways. 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 Because we are satisfied that Montriél alleges only a harmless error, we summarily affirm.

The State filed an information charging Montriél with armed robbery by threat of force and with burglary of a home, all as a party to a crime. Montriél entered not guilty pleas. The State offered to resolve the charges with a plea agreement and described the proposed terms at a pretrial conference:

The original offer was ... a plea to count one and to count two. The [S]tate would be recommending seven years initial confinement, three years extended supervision on count one. And on count two, recommending one year initial confinement, one year extended supervision consecutive. The [S]tate also was offering not to charge an additional count of home invasion burglary for the second home that was entered.

Defense counsel confirmed that the State had accurately described the offer and said that Montriél “was not inclined to accept the offer.” Montriél agreed.

The circuit court subsequently conducted another pretrial conference, and defense counsel and Montriél again both confirmed that Montriél “did not wish to accept the offer.” Counsel also advised that Montriél was “not proposing a counteroffer.” The State then filed an amended information adding a second count of home invasion burglary as a party to a crime.

The case proceeded to trial some months later. At the outset, the parties and the circuit court revisited the negotiations for resolution of the matter, and the prosecutor reiterated the State’s offer on the record. Defense counsel then advised that he had reviewed the offer with Montriél “many times,” but that Montriél “has always rejected it and rejected it this morning and has not

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

expressed any desire to propose a counteroffer.” Montriél personally told the circuit court that his counsel’s representations were correct. The prosecutor added that the State’s offer was revoked.

After jury selection, the circuit court adjourned the proceedings for the lunch break. When the parties reconvened, defense counsel stated that he “may have misunderstood something that [his] client was trying to tell [him]” and requested a conference in chambers. Back on the record, the circuit court said:

There was a question about whether I’d be willing to accept a no-contest plea from Mr. Montriél. I didn’t get any basis that would support it under the law for why that would be. A no-contest plea is reserved for someone who admits to the—admits that evidence exists as to the conduct but has no memory of it; for example, if they were extremely intoxicated, they could plead no contest because you all say I did this, and I know something happened. I just don’t remember what it is. That’s a no-contest plea. It’s my understanding that’s not a factual fit for this case.

Following the ruling, defense counsel confirmed that Montriél wished to proceed to trial, and the prosecutor reiterated that the State’s offer was “off the table.”

The jury found Montriél guilty of the three charges that he faced. At sentencing, the circuit court imposed three consecutive terms of imprisonment. For the armed robbery conviction, the circuit court imposed a twelve-year term, bifurcated as eight years of initial confinement and four years of extended supervision. For each burglary conviction, the circuit court imposed an evenly bifurcated eight-year term. The aggregate sentence was thus sixteen years of initial confinement and twelve years of extended supervision. The circuit court identified Montriél’s failure to accept responsibility as an aggravating factor necessitating a penalty more severe than the aggregate disposition of twelve years of initial confinement and eight years of extended supervision that the State recommended at sentencing.

Montriél moved for postconviction relief. He contended that the judgment of conviction should be vacated because the circuit court misstated the law governing the availability of no-contest pleas; and he requested an evidentiary hearing to explore the effects of the alleged error and to determine how to proceed.² The circuit court rejected the claim without a hearing, concluding, as relevant here, that any error was harmless. Montriél appeals.

When a defendant moves for postconviction relief, the circuit court is not required to grant a hearing unless the motion contains sufficient allegations of material fact that, if true, would entitle the defendant to relief. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. The sufficiency of the motion presents a question of law for our independent review. *Id.* A defendant’s postconviction motion will normally be sufficient if it includes allegations that establish “the five ‘w’s’ and one ‘h’; that is, who, what, where, when, why, and how.” *Id.*, ¶23. If the postconviction motion does not include sufficient allegations of material fact that, if true, entitle the defendant to relief, if the allegations are merely conclusory, or if the record conclusively shows that the defendant is not entitled to relief, the circuit court in its discretion may deny a postconviction motion without a hearing. *Id.*, ¶9.

Montriél argues here, as he also argued in his postconviction motion, that the circuit court misinformed the parties by stating that no-contest pleas are limited to circumstances where the defendant lacks any memory of the crime. The State concedes that the circuit court erred in this regard. The concession is well-taken. “A criminal defendant, by pleading no contest, declines to

² Before filing a postconviction motion, appellate counsel filed an appeal under the no-merit procedures set forth in WIS. STAT. RULE 809.32. We rejected the no-merit report and dismissed the appeal, concluding that further proceedings in regard to the circuit court’s statements about the availability of no-contest pleas would not be wholly frivolous. *State v. Montriél*, No. 2021AP1888-CRNM, unpublished op. and order (WI App Nov. 2, 2023).

exercise his or her right to put the State to [its] burden of proving him guilty beyond a reasonable doubt, but does not admit unqualified guilt.” *State v. Black*, 2001 WI 31, ¶15, 242 Wis. 2d 126, 624 N.W.2d 363. The decision to accept a no-contest plea rests in the circuit court’s discretion, and a circuit court may consider a variety of factors when deciding whether to accept or reject the plea. *State v. Martin*, 162 Wis. 2d 883, 904, 470 N.W.2d 900 (1991); *see also* WIS JI—CRIMINAL SM-32A at 5-6 (2021). The State argues, however, that the circuit court’s error was harmless.

“The test for harmless error is ‘whether there is a reasonable possibility that the error contributed’ to the outcome ‘An error is harmless if it does not affect the defendant’s substantial rights.’” *State v. Johnson*, 2012 WI App 21, ¶14, 339 Wis. 2d 421, 811 N.W.2d 441 (citations omitted). We determine independently whether an error is harmless. *State v. Carnemolla*, 229 Wis. 2d 648, 653, 600 N.W.2d 236 (Ct. App. 1999). Upon our independent review here, we conclude that no reasonable possibility exists that the circuit court’s error contributed to the outcome of the proceedings. The circuit court therefore properly denied Montriél’s postconviction motion without a hearing.

First, nothing in the record shows that Montriél was ever willing to resolve the case with a plea agreement of any kind. He repeatedly confirmed on the record, personally and by counsel, that he wanted to reject the State’s offer and proceed to trial. His postconviction motion failed to offer any contrary facts from outside the record. Rather, the appendix to that motion included a statement from his trial counsel that, on the day of trial, Montriél confirmed to trial counsel that “no deal [was] desired.” Second, and relatedly, the State withdrew its offer to resolve the case with a plea agreement before the circuit court erroneously described the circumstances in which a defendant may enter a no-contest plea. The record thus does not show that the circuit court’s error affected either Montriél’s decision to proceed to trial or his opportunity for a plea agreement.

Montriél argues, however, that the error probably affected the outcome of the proceedings because “there is a reasonable likelihood that a correct statement of the law would have led the parties to further negotiate a settlement by way of a no-contest plea from Montriél.” This conclusory assertion is unsupported by any material facts. Montriél does not demonstrate why different information from the circuit court would have led the State to revive its negotiating position, or how the case would have been resolved, or what specific effect more accurate information would have had on the parties. See **Allen**, 274 Wis. 2d 568, ¶23. Montriél’s unsupported allegation is insufficient to demonstrate a reasonable probability that the circuit court’s misstatement affected plea negotiations. See *id.*

Of course, a circuit court may allow a defendant to enter no-contest pleas without a plea agreement, but we conclude that such pleas here would not have affected the outcome of the proceedings. To the contrary, upon accepting no-contest pleas, the circuit court would have found Montriél guilty of the three charges he faced, placing him in the same position as he found himself after trial. See **State ex rel. Warren v. Schwarz**, 219 Wis. 2d 615, 631, 579 N.W.2d 698 (1998).

Montriél nonetheless asserts that no-contest pleas would have benefitted him because the circuit court viewed his failure to accept responsibility as an aggravating sentencing factor. We are not persuaded that no-contest pleas were reasonably likely to alter the circuit court’s view. As Montriél concedes, “a no-contest plea is something less than full acceptance of responsibility.” Indeed, the advantage of entering a no-contest plea is to avoid an express admission of guilt, thus avoiding some of the collateral effects of accepting responsibility that accompany a guilty plea. See **Black**, 242 Wis. 2d 126, ¶15.

Moreover, the circuit court’s references at sentencing to Montriél’s failure to accept responsibility related to Montriél’s sentencing statements. Specifically, the circuit court described Montriél’s allocution, stating: “You apologize[d] to all the people you’ve hurt that are in your life without giving any thought to apologizing to the victims or taking any—not even one ounce of responsibility for this[.]” The circuit court subsequently reiterated that it had “heard not one—one ounce of accepting of responsibility[.]” The circuit court then imposed an aggregate sentence of sixteen years of initial confinement and twelve years of extended supervision, explaining that the court “d[id]n’t see how [it] could do anything else. You have robbed these victims of every ounce of security they have ever had, and you’ve accepted no responsibility for it.”

As the State points out, no reasonable possibility exists that Montriél’s sentencing allocution would have been any different if, instead of pleading not guilty and going to trial, Montriél had instead refused to admit guilt by pleading no-contest. Therefore, no-contest pleas would not have alleviated the circuit court’s concerns about his failure to accept responsibility for his actions.

In light of the foregoing, we conclude that no reasonable possibility exists that the circuit court’s error in describing the law governing no-contest pleas had any effect on the outcome of the proceedings. Accordingly, we affirm.

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