COURT OF APPEALS
DECISION
DATED AND FILED

November 4, 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. 2025AP1767-CR **Cir. Ct. No. 2021CF664**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RUBEN ALEX PACHECO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sheboygan County: DANIEL J. BOROWSKI, Judge. *Affirmed*.

Before Lazar, P.J., Gundrum, and Grogan, JJ.

¶1 LAZAR, P.J. Ruben Alex Pacheco appeals a judgment of conviction and an order granting in part and denying in part his postconviction motion. For the following reasons, we affirm.

BACKGROUND

¶2 Pacheco entered into a global plea agreement to settle three cases. In exchange for Pacheco's pleas to two operating-while-intoxicated (OWI) charges in separate cases and a charge of repeated sexual assault of a child in a third case, the State agreed to recommend no more than 15 years of initial confinement and 15 years of extended supervision on the child sexual assault charge, with lesser concurrent jail terms on the two OWI charges. In addition, the State agreed to dismiss and read in all remaining offenses, including charges of second-degree recklessly endangering safety and misdemeanor bail jumping related to the OWI (third) charge, and felony bail jumping and misdemeanor bail jumping related to the child sexual assault charge.

¶3 The circuit court accepted Pacheco's pleas.[1] The court sentenced Pacheco to 4 months' jail, consecutive to any other sentence, for his conviction for OWI (second); 12 months' jail, consecutive to all counts, for his conviction for OWI (third);[2] and 17 years of initial confinement and 15 years of extended supervision for his child sexual assault conviction.

¶4 Pacheco filed a postconviction motion requesting, in relevant part, that the circuit court vacate the judgments entered in all three cases and permit him to withdraw his pleas. Because two of the three cases involved defective

[1] The circuit court was presented with three separate plea forms instead of a single plea form.

[2] The State had recommended "OWI (2) at sixty (60) days, and OWI (3) at one-hundred-eighty (180) days, with both OWI sentences concurrent to each other and concurrent to the [repeated sexual assault] sentence."

convictions,[3] Pacheco argued that he should be permitted to withdraw his pleas to all three cases. He maintained withdrawal of a plea to a single charge covered by a plea agreement constituted a repudiation of the entire plea agreement.

¶5 The State conceded the defects but contended that Pacheco was entitled to withdraw his pleas for the two OWI offenses only. The State argued that under the totality of the circumstances, plea withdrawal for the child sexual assault case was unwarranted, particularly because there was no defect regarding the plea taken in that case. The State noted that with respect to that charge, Pacheco did not specifically challenge anything, such as the sufficiency of the evidence, the taking of the plea, or the length of the sentence. Additionally, it noted that a new sentencing court may impose less onerous sentences in the OWI cases. The State also outlined the victims' rights considerations, including their statutory right to a speedy disposition free from unreasonable delay.[4]

¶6 However, Pacheco maintained, although his plea in the child sexual assault case was not defective, allowing him to withdraw his pleas in only two of the three cases would strip him of the benefit he secured through the global plea agreement and, thus, withdrawal in all three cases was required. He alleged that, if he faced trial on the OWI charges, he would face additional confinement and the related reckless endangerment charge. For its part, the State acknowledged that it

[3] The State had charged the first of the two OWI charges resolved in the global plea agreement as a criminal offense, although more than ten years had elapsed since Pacheco's previous OWI offense in 2010. Thus, the second of the two OWI charges was also misclassified.

[4] *See* WIS. CONST. art. I, § 9m; WIS. STAT. § 950.04(1v)(k) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

would agree not to reissue the charge of reckless endangerment related to the OWI (third) offense.

¶7 The circuit court granted the State's request to limit plea withdrawal to the two OWI cases, which were then reinstated for prosecution. The court denied plea withdrawal in the child sexual assault case. The court acknowledged in its oral ruling that ordinarily "repudiation of a portion of the plea agreement constitutes a repudiation of the entire agreement" that would call for vacating the entire agreement and reinstating the original charges. But the court recognized that "the appropriate remedy in a given case depends on the totality of the circumstances[.]"

¶8 Having considered the totality of the circumstances and "taking into account everyone's interest[,]" the circuit court determined it would not repudiate the entire global plea agreement. Those circumstances included the following: (1) the victim's right to a prompt disposition of the case and the rights of the victim under Marsy's Law; (2) the effect of the significant passage of time on the witnesses' memories; (3) the State's ability to prosecute after many years had passed; (4) the fact that Pacheco did not challenge the validity of the child sexual assault plea; (5) Pacheco's attempt "to ride on the backs of those errors" in the OWI pleas; (6) the State's agreement not to reissue the dismissed and read-in charges in his OWI (third) case; (7) Pacheco's continued receipt of the benefit of the sexual-assault plea agreement as it related to the charges that were dismissed and read in; (8) the determination that Pacheco was "not put in that much of a worse position[,]" especially when compared to the positions of the State and the victim; and (9) "the discrepancy in the seriousness of the offenses[.]"

¶9 The circuit court also distinguished this case from ***State v. Lange***, 2003 WI App 2, 259 Wis. 2d 774, 656 N.W.2d 480, and ***State v. Robinson***, 2002 WI 9, 249 Wis. 2d 553, 638 N.W.2d 564, based on the disparity in seriousness between the defective OWI convictions and the remaining child sexual assault conviction. That disparity, the court reasoned, weighed against Pacheco's attempt "to ride on the backs of pleas to relatively minor charges -- being OWIs -- in the grander scheme of things, especially compared to the repeated sexual assault of a child." Thus, the court granted Pacheco's motion to withdraw his pleas to the OWI convictions but not to the child sexual assault conviction.

¶10 Pacheco appeals.

DISCUSSION

¶11 Pacheco's sole argument is that the circuit court erred in denying his motion to withdraw his plea in the child sexual assault case while permitting plea withdrawal in the two OWI cases, because the limited plea withdrawal deprived him of some benefits he negotiated under the global plea agreement, including the dismissal of charges and the State's recommendation of lesser concurrent jail terms for the OWI offenses. He contends that, because the State's negotiated sentencing recommendation for the OWI charges called for concurrent sentences, the limited plea withdrawal deprived him of that benefit, while the State retained the conviction in the child sexual assault case and is free to prosecute the OWI charges without limitation on its sentencing recommendation if Pacheco is convicted. He further contends that the court misapplied the law in his case because it did not balance his and the State's interests, but rather "disregarded" his interests.

¶12 A circuit "court's choice of remedy when faced with a motion to withdraw all or part of a plea agreement should be reviewed under an erroneous exercise of discretion standard." ***State v. Roou***, 2007 WI App 193, ¶13, 305 Wis. 2d 164, 738 N.W.2d 173. "We will find an erroneous exercise of discretion if the [R]ecord shows that the [circuit] court did not exercise its discretion, if the facts do not support the [circuit] court's decision, or if the [circuit] court applied the wrong legal standard." ***Id.***, ¶14.

¶13 A defendant who seeks to withdraw a plea after sentencing must prove by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. ***State v. Taylor***, 2013 WI 34, ¶24, 347 Wis. 2d 30, 829 N.W.2d 482. "The 'manifest injustice' test requires a defendant to show 'a serious flaw in the fundamental integrity of the plea.'" ***State v. Thomas***, 2000 WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836 (quoting ***State v. Nawrocke***, 193 Wis. 2d 373, 379, 534 N.W.2d 624 (Ct. App. 1995)). A "defendant's burden reflects the [S]tate's interest in the finality of convictions." ***Roou***, 305 Wis. 2d 164, ¶15. "Plea withdrawal under the manifest injustice standard rests in the [circuit] court's discretion." ***Id.***

¶14 Pacheco contends that ***Lange*** controls because, as in ***Lange***, his pleas were entered pursuant to a global plea agreement resolving separate cases, although ***Lange*** involved two cases and Pacheco's agreement involved three. He argues that his convictions are "interconnected" because they arise from the same plea agreement.

¶15 In ***Lange***, we explained that "[o]rdinarily, the remedy for [the] repudiation [of a plea agreement] requires reinstatement of the original charges against the accused[,]" 259 Wis. 2d 774, ¶32, but we noted that this was an issue

of first impression because the global plea agreement involved "multiple judgments, some of which are not embraced by [Lange's] notice of appeal." ***Id.*** The State charged Lange with two counts of party to the crime of delivery of cocaine as a repeat offender and one count of party to the crime of delivery of hydrocodone as a repeat offender. ***Id.***, ¶5. Lange had other charges pending against him in another case, and he negotiated a plea agreement in both cases, resulting in his plea to one count of party to the crime of delivery of a controlled substance and one count of disorderly conduct, in exchange for a dismissal of the repeater allegation and other counts, some of which would be read in. ***Id.***, ¶9.

¶16 On appeal, Lange successfully argued that he should be able to withdraw his plea to the crime of delivery of a controlled substance for not being voluntarily and knowingly made, upon which basis we remanded the case to give the State an opportunity to present evidence that Lange's plea was knowing, voluntary, and intelligent. ***Id.***, ¶¶22, 29-30. Lange argued that if the State were to fail to satisfy its shifted burden on remand, only that plea should be withdrawn, not his plea to disorderly conduct. ***Id.***, ¶31. The State argued that in such a situation, the entire plea agreement should be vacated. ***Id.*** We agreed with the State and decided that the convictions were "interconnected" because the pleas were entered as part of a global plea agreement, even though the multiple convictions were not entered in a single judgment of conviction. ***Id.***, ¶36. Thus, we authorized the circuit court to vacate both judgments of conviction and reinstate the original charges in both cases if the State were to fail to satisfy its shifted burden. ***Id.***, ¶37.

¶17 In coming to this conclusion, we relied on ***State v. Briggs***, 218 Wis. 2d 61, 579 N.W.2d 783 (Ct. App. 1998). ***Lange***, 259 Wis. 2d 774, ¶32. There, Briggs was convicted of being a party to the crimes of attempted felony

murder and armed burglary pursuant to a plea agreement. ***Briggs***, 218 Wis. 2d at 63. On appeal, Briggs successfully challenged only the felony murder conviction, and he argued that his other conviction should remain intact. ***Id.*** at 69, 74. We explained, "This argument follows from the notice of appeal Briggs filed, which did not appeal from the entire judgment, but rather, selectively appealed only that part of the judgment which found him guilty of and sentenced him for attempted felony murder." ***Id.*** at 69. We rejected Briggs's argument, citing the statute governing criminal appeals: "[WISCONSIN STAT. §] 809.30 does not describe appeals from portions of judgments or orders, nor does it indicate that the defendant may limit the scope of our review of a judgment or order from which appeal is taken." ***Briggs***, 218 Wis. 2d at 70. Thus, we determined that our jurisdiction in a criminal appeal is not limited by how the defendant phrases the notice of appeal. ***Id.*** at 69-71. We noted further that where a judgment under consideration arises from a plea bargain, it "caus[es] the convictions within the judgment to be interconnected." ***Id.*** at 71.

¶18 We disagree with Pacheco's argument that all his pleas should be vacated due to their "interconnectedness" by virtue of having been resolved by the global plea agreement. ***Briggs*** stands for the proposition that a criminal appeal taken from one or more convictions resulting from a plea bargain brings before us the entire judgment appealed from. ***Id.*** Because Lange, like Briggs, argued that the circuit court should vacate only one conviction from his judgment, ***Briggs*** was instructive. ***Lange***, 259 Wis. 2d 774, ¶¶32-36. ***Lange*** does not establish an inflexible rule requiring a court to vacate all convictions resolved through a plea agreement whenever a defect is found in one of them, even where a plea agreement involves separate cases.

¶19 In ***Robinson***, our supreme court considered the appropriate remedy where a defendant sought to withdraw one of two pleas that, in that case, had been entered in a single case. 249 Wis. 2d 553, ¶¶1-2. The case involved a judgment of conviction on two counts of recklessly endangering safety in which the defendant sought to set aside one of the counts as multiplicitous. ***Id.***, ¶1. The court held that a motion to vacate a conviction on one count "constitutes a repudiation of the plea agreement." ***Id.***, ¶47. The court held that the ordinary remedy should be "to reverse the conviction, vacate the negotiated plea agreement … , and reinstate the original charges[.]" ***Id.***, ¶48. However, the court left it to the circuit court's discretion what remedy to apply under the totality of the circumstances, weighing the interests of both the defendant and the State. ***Id.***

¶20 In Pacheco's case, the circuit court cited the appropriate controlling legal principles and applied those principles to the facts in his case. It correctly stated that "there is no right to have a global agreement vacated in its entirety when … one of the convictions is defective." Pursuant to ***Robinson***, it considered the totality of the circumstances. The court considered the benefits Pacheco retained under the agreement, the seriousness of the child sexual assault charge, and the interests of the State and the victim. The benefits retained by Pacheco included the State's agreement not to reissue the dismissed and read-in charges in his OWI (third) case and his continued receipt of the benefit of the sexual-assault plea agreement relating to the charges that were dismissed and read in.

¶21 Pacheco emphasizes that he lost the benefit of the State's negotiated sentencing recommendation that the OWI sentences run concurrently with the

sentence for child sexual assault.[5] We recognize that consequence of the limited plea withdrawal. But the loss of that benefit did not, by itself, require the circuit court to vacate the entire global plea agreement. The court also considered the interests of the State and the victim, the disparity in seriousness between the offenses, and the fact that Pacheco's plea to the more serious child sexual assault charge remained valid and unchallenged.

¶22 We are further guided by ***Roou***, 305 Wis. 2d 164. Under a plea agreement, Roou pled no contest to armed robbery with use of force and second-degree recklessly endangering safety, while four additional charges were dismissed and read in. ***Id.***, ¶¶1, 5. In postconviction proceedings, Roou moved to withdraw the entire plea agreement, claiming he had been misinformed about the elements of recklessly endangering safety. ***Id.***, ¶8. The State stipulated that Roou should be allowed to withdraw that plea, but it opposed his request to withdraw his plea to armed robbery. ***Id.***, ¶21. The State assured the circuit court that, if it granted Roou's plea withdrawal motion to recklessly endangering safety only, it would not seek to reinstate any of the other charges, including recklessly

[5] Although Pacheco asserts that "[w]hen a plea to any individual charge is invalid the entire plea bargain is generally invalidated if the basis on which either party entered into the plea agreement was substantially changed[,]" he does not explain how the partial withdrawal of his pleas substantially changes the basis of the global plea agreement to require withdrawal of his plea in the child sexual assault case. Pacheco argues that he lost the benefit of the State's agreement to recommend concurrent sentencing on the OWI charges. However, the circuit court imposed consecutive sentences on both OWI charges as applied to the child sexual assault case, contrary to the State's recommendation. Thus, although Pacheco lost the benefit of the State's negotiated sentencing recommendation, the sentences actually imposed undermine his characterization of that loss as "a significant concession" "if the current ruling stands." The sentences also lend support to the court's conclusion that "[Pacheco is] not put in that much of a worse position … especially when compared to the position that the State and victim are put in [if the child sexual assault conviction was also vacated and reinstated]."

endangering safety. ***Id.*** Roou failed to show a serious flaw in the fundamental integrity of his plea to the armed robbery charge. ***Id.***, ¶23.

¶23 The circuit court concluded that a limited plea withdrawal was the correct remedy: it granted Roou's motion to withdraw his plea to recklessly endangering safety but denied his motion as to the armed robbery charge. ***Id.***, ¶¶8-9. It observed that by entering into the plea agreement, Roou had reduced his maximum prison exposure and had reduced the number of charges against him. ***Id.***, ¶23. On appeal, we noted that "[t]he [circuit] court's error of misinforming Roou of the elements of the reckless endangerment charge was not material or substantial as to the armed robbery charge." ***Id.***, ¶26. Thus, although ***Robinson*** identifies vacatur of the plea agreement and reinstatement of the original charges as the ordinary remedy, that remedy "is not the mandated remedy as a matter of law" and "th[e] determination lies within the [circuit] court's sound discretion." ***Roou***, 305 Wis. 2d 164, ¶26.

¶24 In Pacheco's case, the circuit court did not err in limiting plea withdrawal to the OWI cases. As in ***Roou***, the errors affecting the OWI pleas did not undermine the validity of Pacheco's plea to the child sexual assault charge. Those errors entitled Pacheco to withdraw his pleas in the OWI cases but did not require withdrawal of his plea to the child sexual assault charge. The State's commitment not to reinstate the reckless endangerment charge also means that Pacheco retains that benefit of the original plea agreement.

¶25 For the foregoing reasons, we conclude that the circuit court applied the correct law and appropriately exercised its discretion: the court did not err in allowing Pacheco to withdraw his pleas to the defective OWI convictions while denying plea withdrawal for the child sexual assault conviction.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.