COURT OF APPEALS DECISION DATED AND FILED

April 21, 2016

Diane M. Fremgen
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. 2015AP1546 **Cir. Ct. No. 2013CF43**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MIGUEL ANGEL LANGARICA,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Green County: THOMAS J. VALE, Judge. *Affirmed*.

¶1 KLOPPENBURG, P.J.[1] Miguel Langarica appeals the denial of his postconviction motion to withdraw his plea. Langarica argues that his plea was not entered knowingly, intelligently, and voluntarily because, according to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Langarica, his “misunderstanding” as to whether he would have to register as a sex offender in Illinois “was based on information provided to him by trial counsel and this misunderstanding undermined the knowing and voluntary nature of his plea.” As I proceed to explain, Langarica fails to show that his misunderstanding was based on incorrect statements by trial counsel. Therefore, Langarica fails to demonstrate a manifest injustice and the circuit court did not err in denying Langarica’s postconviction motion to withdraw his plea.

BACKGROUND

¶2 The following facts are undisputed. Miguel Langarica was charged with one count each of disorderly conduct domestic abuse, substantial battery domestic abuse, and second degree sexual assault domestic abuse, all arising from an incident that occurred on March 6, 2013. The State made a plea offer, which included reducing the felony charge of second degree sexual assault to misdemeanor fourth degree sexual assault. According to the terms of the negotiated plea agreement, Langarica would plead no contest to one misdemeanor count each of battery domestic abuse and fourth degree sexual assault, and the misdemeanor count of disorderly conduct domestic abuse would be dismissed.[2] Langarica expressed concerns to trial counsel regarding having to register as a sex offender if he accepted the plea offer.

¶3 On July 10, 2014, trial counsel informed Langarica that he would not have to register as a sex offender under Wisconsin law:

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[2] It appears from the record on appeal that pursuant to this plea agreement, one count of felony bail jumping in another case was also reduced to a misdemeanor and charges in a third case were dismissed.

> Dear Mr. Langarica:
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> Pursuant to your request that I obtain further information on the plea agreement, I researched the Wisconsin Law in that area. I have confirmed that fourth degree sexual assault is **not** a crime subject to registration under the Wisconsin sex offender laws.

(Emphasis in original.) On September 5, 2014, Langarica pleaded no contest to the misdemeanor charges of battery domestic abuse and fourth degree sexual assault, pursuant to the negotiated plea agreement.

¶4 Langarica subsequently filed a postconviction motion to withdraw his plea. The circuit court held an evidentiary hearing and denied Langarica's motion.

DISCUSSION

¶5 Langarica argues that withdrawal is necessary to correct a manifest injustice because his plea was not entered knowingly, intelligently, and voluntarily. More specifically, he argues that his "misunderstanding" as to whether he would have to register as a sex offender in Illinois "was based on information provided to him by trial counsel and this misunderstanding undermined the knowing and voluntary nature of his plea." As I now explain, Langarica's argument fails because his misunderstanding was not based on incorrect statements by his trial counsel.

¶6 "We accept the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous but we determine independently whether those facts demonstrate that the defendant's plea was knowing, intelligent, and voluntary." ***State v. Brown***, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906.

¶7 "Generally, a defendant wishing to withdraw a plea of guilty or no contest has the burden of showing by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice." ***State v. James***, 176 Wis. 2d 230, 236-37, 500 N.W.2d 345 (Ct. App. 1993). "A 'manifest injustice' occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea …." ***Id.*** at 237.

¶8 "Because a defendant waives important constitutional rights by entering a plea of guilty or no contest to a criminal charge, the law requires that the plea be entered knowingly and voluntarily—'with sufficient awareness of the relevant circumstances and likely consequences' that could follow." ***Id.*** at 238 (quoted source omitted). "It is equally well established, however, that in informing accused persons of their rights, courts are only required to notify them of the 'direct consequences' of their pleas. There is no requirement that a defendant entering a plea be informed of indirect or 'collateral' consequences of conviction." ***Id.*** (citations omitted).

¶9 The parties appear to agree that any requirement that Langarica register as a sex offender in Illinois is a "collateral" consequence of his conviction. However, Langarica cites this court's statement in ***State v. Brown***, 2004 WI App 179, ¶8, 276 Wis. 2d 559, 687 N.W.2d 543, that "Wisconsin courts have permitted defendants to withdraw pleas that were based on a misunderstanding of the consequences, even when those consequences were collateral," to support his contention that he should be permitted to withdraw his plea. Langarica misunderstands the reach of ***Brown***.

¶10 In ***Brown***, this court narrowly held that a defendant's plea was not knowingly and voluntarily entered where he was *misinformed* by both his attorney

and the prosecutor as to the consequences of his plea. This court based our decision on the fact that "Brown's belief was not the product of 'his own inaccurate interpretation,' but was based on *affirmative, incorrect statements* on the record by Brown's counsel and the prosecutor." 276 Wis. 2d 559, ¶13 (emphasis added). No such affirmative, incorrect statement exists in this case.

¶11 Here, Langarica and his trial counsel testified at the evidentiary hearing. Trial counsel testified that "Langarica had concerns about the case in general, but in particular about accepting [the plea offer], he wanted to make sure that he was not required to register as a sex offender, that that was a deal breaker." Trial counsel testified that he responded by telling Langarica that "under the law of the State of Wisconsin, [Langarica] didn't have to register under this offense." Trial counsel testified that he confirmed with Langarica that fourth degree sexual assault is not a crime subject to registration under Wisconsin law in a letter dated July 10, 2014 from his office to Langarica. Trial counsel further testified that he doesn't "remember talking about what might happen in Illinois" because he is not licensed to practice law in Illinois, and that he does not recall "discussing anything about Illinois law" with Langarica.

¶12 Langarica testified that he would not have accepted the plea offer if he had known he would be required to register as a sex offender. He testified that trial counsel "never said anything that … would make [him] worry that it was a different law in Illinois."

¶13 Langarica does not allege that his trial counsel gave him incorrect information as to Illinois law on sex offender registration. Langarica alleges only that trial counsel did not give him any information as to Illinois law. Nothing in the record suggests that Langarica ever asked his trial counsel about sex offender

registration requirements under Illinois law, and nothing in the letter from trial counsel to Langarica suggested that Langarica would not be required to register as a sex offender under Illinois law. Thus, contrary to Langarica's contention, the facts here are not comparable to those in ***Brown***, where affirmative, incorrect statements misinformed the defendant.

¶14 In sum, Langarica fails to demonstrate that the narrow exception in ***Brown*** applies here, where no misinformation was given to Langarica by his trial counsel. Therefore, Langarica's argument that his plea was not entered knowingly, intelligently, and voluntarily fails.

CONCLUSION

¶15 For the reasons set forth above, I conclude that the circuit court did not err in denying Langarica's postconviction motion to withdraw his plea. Therefore, I affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.