COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2016

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2133-CR **Cir. Ct. No. 2013CF3189**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARQUIS J. CHAPMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM S. POCAN, Judge. *Affirmed*.

Before Curley, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. Marquis J. Chapman appeals a judgment of conviction entered upon his guilty pleas to two counts of delivering not more than three grams of heroin and one count of possessing with intent to deliver more than fifteen grams of cocaine but less than forty grams of cocaine. He also appeals a

postconviction order that denied his motion for plea withdrawal, or, alternatively, resentencing. On appeal, he contends that his trial counsel was ineffective and that the circuit court coerced his guilty pleas and erroneously exercised its sentencing discretion. We reject his many claims and affirm.

BACKGROUND

¶2 On July 20, 2013, the State filed a criminal complaint charging Chapman with five crimes. In count one, the State alleged Chapman delivered .98 grams of heroin to a confidential informant while in a car on a Milwaukee city street. The allegation included a description of Chapman instructing the informant how to make a profit selling heroin by diluting it. In count two, the State alleged Chapman delivered 1.79 grams of heroin to the same informant on a separate occasion while in a car at a Milwaukee gas station. In count three, the State alleged Chapman delivered .68 grams of heroin to a second confidential informant in the back of a jeep parked on a Milwaukee street. In count four, the State alleged Chapman possessed with intent to deliver more than fifteen grams of cocaine but less than forty grams of cocaine, and in count five, the State alleged he possessed heroin. In support of the latter two counts, the State alleged that police executed a search warrant at Chapman's apartment and in his bedroom found 24.3 grams of cocaine, .37 grams of heroin, $1600 in cash, and two large knives. Elsewhere in the home, police found a digital scale and packaging material.

¶3 Chapman disputed the charges and agreed to a February 12, 2014 trial date. In early January 2014, he appeared with his appointed counsel for a status conference and filed motions *in limine*, a witness list, and proposed jury instructions. At the same time, the parties told the circuit court that they were engaged in plea negotiations and asked to put the matter on the calendar for an

additional pretrial proceeding. Chapman's counsel advised, however, that, if the parties were unable to reach a plea bargain, then counsel "was prepared to go to trial on the trial date."

¶4 Before the status conference concluded, the State told the circuit court that one of the confidential informants believed Chapman was trying to locate that informant "to intimidate or to do something inappropriate." The State asked the circuit court to warn Chapman against any such behavior, and the circuit court cautioned Chapman in response.

¶5 On January 17, 2014, Chapman appeared for a pretrial conference with an attorney he had recently retained, although his appointed counsel had not been discharged in the matter. Acting through retained counsel, Chapman moved for substitution of counsel and for a continuance of the trial date, stating that the requested adjournment was for "not a substantial period of time." The State said it was ready for trial.

¶6 After conducting an inquiry on the record, the circuit court found that Chapman failed to offer any reason for a substitution of counsel. In light of that finding and the age of the case, the circuit court ruled it would permit substitution only if retained counsel was prepared to try the case as scheduled. Chapman responded that he wanted to continue with retained counsel, who advised that he would "see if [he] could be prepared" for trial. The circuit court set February 3, 2014, as the final pretrial date.

¶7 On February 3, 2014, Chapman appeared with retained counsel, submitted a signed guilty plea questionnaire, and advised the circuit court that he wanted to plead guilty. He also asked the circuit court to allow a formal substitution of counsel. The circuit court deferred ruling on that request until the

conclusion of the plea hearing, explaining that if Chapman did not successfully enter guilty pleas, then the court would permit substitution only if retained counsel was prepared to try the case as scheduled.

¶8 Pursuant to the parties' plea bargain, Chapman pled guilty to two counts of delivering not more than three grams of heroin and one count of possessing with intent to deliver between fifteen and forty grams of cocaine.[1] *See* WIS. STAT. §§ 961.41(1)(d)1.; 961.41(1m)(cm)3. After accepting the pleas, the circuit court ordered retained counsel formally substituted in place of appointed counsel as Chapman's attorney of record.

¶9 The matter proceeded to sentencing. The circuit court rejected Chapman's proposal for an aggregate seven-year term of imprisonment and declined to find Chapman eligible for either the challenge incarceration program or the Wisconsin substance abuse program. The circuit court imposed an aggregate sixteen-year term of imprisonment comprised of ten years of initial confinement and six years of extended supervision.

¶10 Chapman moved for resentencing on the dual grounds that the circuit court erroneously exercised its sentencing discretion and that his retained

[1] Although the State filed an amended complaint in this case charging Chapman with committing his crimes as a repeat offender, the State moved to strike the repeater allegations at the time of the guilty pleas. Chapman pled guilty to three unenhanced offenses, and, at sentencing, the circuit court noted that the repeater allegations were dismissed. The judgment of conviction, however, erroneously reflects that, pursuant to WIS. STAT. § 961.48(1) (2013-14), Chapman was convicted as a repeat offender as to all charges. We direct that, upon remittitur, the circuit court shall oversee entry of an amended judgment of conviction that does not designate Chapman a repeat offender for purposes of his convictions in this case. *See* ***State v. Prihoda***, 2000 WI 123, ¶¶5, 17, 239 Wis. 2d 244, 618 N.W.2d 857 (circuit court may correct clerical errors in written judgment of conviction at any time). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

counsel was ineffective. Alternatively he sought plea withdrawal, asserting that the circuit court coerced his guilty pleas with its rulings on his requests for a continuance and for substitution of counsel. The circuit court denied his motions without a hearing. He appeals.

DISCUSSION

¶11 As do the parties, we begin by discussing Chapman's litany of claims for sentencing relief. The claims are meritless.

¶12 Our standard of review is well settled. Sentencing lies within the circuit court's discretion, and a defendant must meet a heavy burden to show that the circuit court erroneously exercised its discretion. *See* ***State v. Harris***, 2010 WI 79, ¶30, 326 Wis. 2d 685, 786 N.W.2d 409. We defer to the circuit court's "great advantage in considering the relevant factors and the demeanor of the defendant." *See* ***State v. Echols***, 175 Wis. 2d 653, 682, 499 N.W.2d 631 (1993).

¶13 The circuit court is required to identify the sentencing objectives, which may "include, but are not limited to, the protection of the community, punishment of the defendant, rehabilitation of the defendant, and deterrence to others." ***State v. Gallion***, 2004 WI 42, ¶40, 270 Wis. 2d 535, 678 N.W.2d 197. In seeking to fulfill the sentencing objectives, the circuit court must consider the primary sentencing factors of "the gravity of the offense, the character of the defendant, and the need to protect the public." ***State v. Ziegler***, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76. The sentencing court may also consider a wide range of other factors relating to the defendant, the offense, and the community. *See* ***id.***

¶14 When a defendant challenges a sentence, the postconviction proceedings afford the circuit court an additional opportunity to explain the sentencing rationale. *See* ***State v. Fuerst***, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). If the defendant thereafter pursues an appeal, a reviewing court will search the entire record for reasons to sustain the circuit court's exercise of sentencing discretion. ***McCleary v. State***, 49 Wis. 2d 263, 282, 182 N.W.2d 512 (1971).

¶15 In this case, the sentencing court began its remarks by reviewing the sentencing objectives discussed in ***Gallion***, and the court indicated that its specific goals included protecting the public, "sending a message" that would deter others, and punishing Chapman sufficiently to ensure he understood "the effect that he's had on our community." Chapman does not dispute that the circuit court went on to discuss the primary sentencing factors and numerous others before pronouncing sentence.

¶16 Chapman first says the circuit court erroneously exercised its discretion by finding that the proximity of his drug dealing to a university campus was an aggravating factor in this case. Chapman contends that proximity to a university campus should not be viewed as an aggravating factor in a drug trafficking offense because, he says, WIS. STAT. § 973.017(8) contains a list of factors that the legislature deems aggravating for such offenses and proximity to a university campus is not on the list. Chapman misconstrues the applicable law. The statute he cites does not restrict the circuit court to considering only listed factors as aggravating. To the contrary, § 973.017 expressly permits the circuit court to consider "*any* applicable aggravating factors, *including* the aggravating factors specified in sub.[] ... (8)." *See* § 973.017(2)(b) (emphasis added). Moreover, Chapman is wholly mistaken in his belief that the circuit court acted in

an "arbitrary and capricious" fashion by considering the location of Chapman's crimes. We remind Chapman that a circuit court appropriately considers both the harm to specific neighborhoods that drug dealing causes, *see* ***State v. Trigueros***, 2005 WI App 112, ¶7, 282 Wis. 2d 445, 701 N.W.2d 54, and "the serious impact of heroin and cocaine on society" as a whole, *see* ***State v. Givens***, 217 Wis. 2d 180, 198-99, 580 N.W.2d 340 (Ct. App. 1998).

¶17 Chapman next contends that drug trafficking is not aggravated by proximity to a university campus because a university is not a "school" for purposes of sentence enhancement under WIS. STAT. § 961.49.[2] Chapman's contention is a legal-sounding *non sequitur*. The set of circumstances permitting an enhanced sentence as a matter of law has no bearing on the factors a sentencing court may deem aggravating in the exercise of its discretion. *See* ***State v. Thompson***, 172 Wis. 2d 257, 265, 493 N.W.2d 729 (Ct. App. 1992) (circuit court has discretion to determine whether relevant factors, even laudable factors, are aggravating).

¶18 Next, Chapman complains because the circuit court worried aloud that his actions led to "the destruction of people's lives and probably the deaths of people in this community." To the extent that Chapman suggests the circuit court accused him of actually causing another person's death, he misconstrues the record. As the circuit court clarified later in the proceedings, it was concerned that Chapman's drug dealing was "potentially" deadly. This is a proper consideration

[2] Chapman actually bases his argument on a citation to "WIS. STAT. § 161.49." That statute no longer exists. It was renumbered WIS. STAT. § 961.49 and amended twenty years ago. *See* 1995 Wis. Act 448, § 289. Under the statute that exists today, a circuit court may impose a sentence longer than the maximum otherwise allowed by law if the defendant commits certain narcotics offenses under the circumstances described in § 961.49(1m). *See* ***id.***

when sentencing a defendant for crimes involving cocaine and heroin. *See* ***Givens***, 217 Wis. 2d at 198-99.

¶19 Chapman next argues that the circuit court improperly considered information provided by the State regarding a recorded jailhouse telephone conversation in which he made obscene remarks and said he would "never cooperate[]" with law enforcement. He asserts: "[i]t is error to conflate an attitude towards the police with remorse, repentance and cooperativeness." Chapman does not support this claim of error with a citation to legal authority. For that reason alone, we may disregard the claim. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). Moreover, Chapman is wrong: a sentencing court properly considers a defendant's attitude and pattern of conduct. *See* ***Lange v. State***, 54 Wis. 2d 569, 575-76, 196 N.W.2d 680 (1972).

¶20 Next, Chapman asserts the circuit court erroneously exercised discretion by considering the State's allegations, again based on his recorded jailhouse telephone calls, that he was managing an ongoing drug distribution scheme while incarcerated. He suggests the circuit court was required to accept the innocent explanation he offered for his suspicious remarks because he was not charged with or convicted of jailhouse drug trafficking. Chapman misunderstands the scope of the circuit court's discretion. The circuit court may consider offenses that are unproven and uncharged and may even consider crimes for which a defendant has been acquitted.[3] ***State v. Frey***, 2012 WI 99, ¶47, 343 Wis. 2d 358, 817 N.W.2d 436.

[3] The State addresses Chapman's argument relating to drug trafficking activity while in jail by recasting the argument as one that asserts a due process right to be sentenced on accurate information. *See* ***State v. Tiepelman***, 2006 WI 66, ¶9, 291 Wis. 2d 179, 717 N.W.2d 1. We (continued)

¶21 Chapman next says he advised the circuit court "he was involved in the drug trade because he was a user and was funding his own habit," and he contends the circuit court erred by rejecting this self-serving statement as a mitigating factor. Chapman is again mistaken. As the circuit court correctly explained, it "had no duty to find that [drug use] was a mitigating factor." *Cf.* ***Thompson***, 172 Wis. 2d at 265. Moreover, the circuit court properly exercised its discretion by concluding that "[b]ased on the magnitude of drug dealing [in] which the defendant was engaged, it was not a mitigating factor." *See* ***State v. Harbor***, 2011 WI 28, ¶¶60-62, 333 Wis. 2d 53, 797 N.W.2d 828 (circuit court properly exercised discretion by concluding defendant's drug use was aggravating because it led defendant to commit other crimes and made defendant a danger to society).

¶22 Chapman next claims the circuit court erred by refusing to declare him eligible for participation in the challenge incarceration program and the Wisconsin substance abuse program.[4] Both are prison treatment programs that, upon successful completion, permit an inmate serving a bifurcated sentence to convert his or her remaining initial confinement time to extended supervision time. *See* WIS. STAT. §§ 302.045(3m)(b) & 302.05(3)(c)2. A sentencing court exercises its discretion when determining a defendant's eligibility for these programs, and we will sustain the sentencing court's conclusions if they are supported by the

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decline to join the State in crafting a due process argument for Chapman. He raised a challenge to the sentencing court's exercise of discretion and that is the claim we consider. Nonetheless, we note for the sake of completeness that the State correctly analyzes the due process claim.

[4] The Wisconsin substance abuse program was formerly known as the earned release program. Effective August 3, 2011, the legislature renamed the program. *See* 2011 Wis. Act 38, § 19; WIS. STAT. § 991.11. The program is identified by both names in the current version of the Wisconsin Statutes. *See* WIS. STAT. §§ 302.05; 973.01(3g).

record and the overall sentencing rationale. *See* ***State v. Owens***, 2006 WI App 75, ¶¶7-9, 291 Wis. 2d 229, 713 N.W.2d 187; WIS. STAT. §§ 973.01(3g)-(3m).

¶23 In this case, the circuit court declined to find Chapman eligible for either program because his drug dealing endangered the public, he "need[ed] to have a substantial time out," and the circuit court did not want to "g[i]ve him an opportunity ... in a few years to be back out in the community preying on the community." The discussion reflects the circuit court's view that making Chapman eligible for either the substance abuse program or the challenge incarceration program would be inconsistent with the sentencing goals of punishment and public safety. This is an entirely proper exercise of sentencing discretion that we will not disturb. *See* ***Owens***, 291 Wis. 2d 229, ¶11.

¶24 Next, Chapman complains that the circuit court considered the allegation that he told one of the confidential informants how to make a profit diluting and reselling heroin. The circuit court referred to this as a "franchise set up" and agreed with the State that Chapman's advice "sound[ed] like a pyramid scheme." Chapman asserts that the circuit court erroneously exercised discretion by considering the allegation. The description of his advisements to the informant is, however, in the criminal complaint. A circuit court properly exercises its sentencing discretion by relying on facts in the record. *See* ***State v. Travis***, 2013 WI 38, ¶16, 347 Wis. 2d 142, 832 N.W.2d 491.

¶25 Perhaps recognizing the futility of challenging a sentencing court's reliance on an uncontested record, Chapman alleged in his postconviction motion that his trial counsel was ineffective at sentencing by failing to dispute the allegations in the criminal complaint regarding his advisements to the confidential informant. In support, he filed an affidavit asserting he "did not instruct the

confidential informant to cut heroin and resell it." On appeal, he interrupts his barrage of attacks on the circuit court's sentencing discretion to renew the allegation that his trial counsel was ineffective in regard to this matter.

¶26 The familiar two-prong test set forth in ***Strickland v. Washington***, 466 U.S. 668 (1984), governs claims of ineffective assistance of counsel. To prevail, a criminal defendant must show both deficiency in counsel's performance and prejudice as a result. ***Id.*** at 687. If a defendant fails to make an adequate showing as to one prong, the court need not address the other. ***Id.*** at 697.

¶27 Chapman complains that the circuit court did not grant him a hearing on his ineffective assistance of counsel claim, but a defendant is not automatically entitled to such a hearing. Rather, the question is governed by ***Nelson v. State***, 54 Wis. 2d 489, 195 N.W.2d 629 (1972), and ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d 50 (1996). *See* ***State v. McDougle***, 2013 WI App 43, ¶12, 347 Wis. 2d 302, 830 N.W.2d 243. To secure a postconviction hearing under this line of cases, a defendant must allege facts that, if true, would entitle the defendant to relief. *See* ***id.*** No hearing is required if the motion does not raise sufficient material facts, the allegations are merely conclusory, or if the record conclusively shows the defendant is not entitled to relief. *See* ***id.*** Whether a postconviction motion contains allegations of material fact sufficient to entitle a defendant to a hearing presents a question of law for our independent review. *See* ***id.***

¶28 In this case, nothing in Chapman's postconviction motion suggests Chapman ever told his trial counsel that the criminal complaint included any allegedly false statements. *Cf.* ***State v. Allen***, 2004 WI 106, ¶24, 274 Wis. 2d 568, 682 N.W.2d 433 (defendant sufficiently alleges material facts by describing information not presented at trial and stating that defendant disclosed that

information to counsel). Moreover, nothing in the postconviction motion reflects that Chapman's trial counsel knew or should have known that any allegations in the criminal complaint were purportedly false. Indeed, we remind Chapman that he stated under oath during the plea colloquy that he had read the criminal complaint and that *the facts in it were true*. Chapman thus fails to identify anything in his postconviction submission sufficient to earn him a hearing on his claim that his counsel was constitutionally ineffective at sentencing.[5]

¶29 Chapman last attacks his sentences on the ground that they are excessive. This presents an additional challenge to the circuit court's sentencing discretion. *See* ***State v. Mursal***, 2013 WI App 125, ¶24, 351 Wis. 2d 180, 839 N.W.2d 173. A circuit court erroneously exercises discretion by imposing a sentence that is so excessive and unusual and so disproportionate to the offense committed as to shock public sentiment and violate the judgment of reasonable people concerning what is right and proper. *See* ***id.*** As we recognized in ***Mursal***, however, '"[a] sentence well within the limits of the maximum sentence ... is not so disproportionate to the offense committed as to shock the public sentiment and violate the judgment of reasonable people concerning what is right and proper under the circumstances.'" ***Id.*** (citation and brackets omitted).

[5] Chapman asserts in his appellate brief that his trial counsel was ineffective during the plea hearing because counsel "allowed [Chapman] to agree" that allegations in the criminal complaint about his advisements to the confidential informant could serve as a factual basis for his pleas. Chapman raises this claim for the first time on appeal; in his postconviction motion, he argued that he received ineffective assistance of counsel only at sentencing. We do not address issues raised for the first time on appeal. ***State v. Dowdy***, 2012 WI 12, ¶5, 338 Wis. 2d 565, 808 N.W.2d 691. Nonetheless, we observe that his claim that counsel was ineffective during the plea proceeding suffers from the same deficiency as does his claim that counsel was ineffective at sentencing, namely, a failure to show that trial counsel had any reason to think that the allegations in the criminal complaint were false.

¶30 Chapman pled guilty to two class F felonies and one class D felony. *See* WIS. STAT. §§ 961.41(1)(d)1. & 961.41(1m)(cm)3. Upon conviction of each class F felony, he faced twelve years and six months of imprisonment and a $25,000 fine. *See* WIS. STAT. § 939.50(3)(f). Upon conviction of the class D felony, he faced twenty-five years of imprisonment and a $100,000 fine. *See* § 939.50(3)(d). Thus, Chapman faced an aggregate of fifty years of imprisonment and fines totaling $150,000. The circuit court imposed two consecutive terms of four years each for the class F felonies and a third consecutive term of eight years for the class D felony. These penalties are well within the maximum sentences allowed by law for the crimes Chapman committed. Accordingly, they are not unduly harsh or excessive. *See* ***Mursal***, 351 Wis. 2d 180, ¶24.

¶31 We turn to Chapman's claim that he should be permitted to withdraw his guilty pleas because they were coerced. "[A] coerced plea ... lacks the voluntariness essential to the validity of a plea." ***Smith v. State***, 60 Wis. 2d 373, 380, 210 N.W.2d 678 (1973). A plea that is involuntary violates due process and may be withdrawn. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 139-40, 569 N.W.2d 577 (1997). Whether a plea is involuntary is a question of constitutional fact. ***State v. Brown***, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906. On review, we defer to the circuit court's findings of historical fact but we determine independently whether the facts render the plea involuntary. ***Id.***

¶32 As with Chapman's claim that trial counsel was ineffective, a motion for plea withdrawal based on alleged coercion invokes the authority of ***Nelson*** and ***Bentley***. *See* ***State v. Sulla***, 2016 WI 46, ¶¶6, 25, 369 Wis. 2d 225, 880 N.W.2d 659. Accordingly, the circuit court had no obligation to hold a hearing on this claim if Chapman presented only conclusory allegations or the record conclusively demonstrates that he is not entitled to relief. *See* ***id.***, ¶27.

¶33 Chapman asserts the circuit court coerced his guilty pleas by wrongly denying his motion for a continuance of the trial date and wrongly resolving his motion for substitution of counsel. To support his assertions, Chapman examines the circuit court's decisions resolving his motions and concludes those decisions were unreasonable. We therefore turn to the question of whether the circuit court reasonably decided his motions.

¶34 Under the United States Constitution, a defendant has a Fourteenth Amendment right to due process that may be affected by the denial of a continuance, but the decision to deny a continuance ultimately rests in the circuit court's discretion and "'probing appellate scrutiny of a decision to deny a continuance is not warranted.'" *See* ***State v. Leighton***, 2000 WI App 156, ¶27, 237 Wis. 2d 709, 616 N.W.2d 126 (citation omitted). Similarly, a defendant has a Sixth Amendment right to counsel that "includes 'the right of a defendant who does not require appointed counsel to choose who will represent him,'" *see* ***State v. Prineas***, 2009 WI App 28, ¶14, 316 Wis. 2d 414, 766 N.W.2d 206 (citation omitted), but the right to counsel of choice is a qualified right subject to well-recognized countervailing considerations, *see* ***State v. Wanta***, 224 Wis. 2d 679, 702, 703-04, 592 N.W.2d 645 (Ct. App. 1999). "[T]he accused's right to select his own counsel cannot be manipulated so as to obstruct the orderly procedure for trials or to interfere with the administration of justice." ***Phifer v. State***, 64 Wis. 2d 24, 30, 218 N.W.2d 354 (1974). Thus, when a defendant seeks substitution of counsel and an associated continuance, "the circuit court must balance a defendant's constitutional right to counsel of choice against the societal interest in prompt and efficient administration of justice." ***Wanta***, 224 Wis. 2d at 703. Whether to grant the requested relief ultimately rests within the sound discretion of the circuit court, *see* ***Prineas***, 316 Wis. 2d 414, ¶13, and the circuit court has

"wide latitude in balancing the right to counsel of choice against the ... demands of its calendar," *see* ***United States v. Gonzalez-Lopez***, 548 U.S. 140, 152 (2006) (internal citation omitted).

¶35 In ***Prineas***, we discussed a variety of relevant factors for the court to balance when faced with a request for substitution of counsel and a related request for a continuance: "the length of delay requested; whether competent counsel is presently available and prepared to try the case; whether prior continuances have been requested and received by the defendant; the inconvenience to the parties, witnesses and the court; and whether the delay seems to be for legitimate reasons." ***Id.***, 316 Wis. 2d 414, ¶13. Additionally, the circuit court should consider whether the defendant offered any reason for the requested substitution and accompanying delay. *See* ***id.***, ¶24.

¶36 Here, Chapman moved on January 17, 2014, to substitute counsel and to delay his February 12, 2014 trial. At the time of the motion, the interest in judicial efficiency was particularly high: the case had been pending for nearly six months, the trial date was only a few weeks away, and the State was prepared for trial. The circuit court denied a continuance and conditioned any substitution on proposed counsel's readiness to try the case on schedule. The record reflects that the circuit court's ruling constituted a proper exercise of discretion.

¶37 First, as in ***Prineas***, Chapman did not suggest that his appointed attorney was unable to proceed on the trial date. *See* ***id.*** To the contrary, the record shows that, ten days before Chapman requested a continuance, his appointed attorney expressly advised the circuit court that he was prepared to try the case as scheduled and filed motions *in limine*, jury instructions, and a witness list confirming such preparedness. Second, as in ***Prineas***, Chapman did not

disclose the length of the delay he anticipated would be necessary for successor counsel to try the case. *See* ***id.*** Instead, Chapman asserted that the delay he sought was for "not a substantial period of time." This vague request did not provide any concrete information about the amount of time needed and failed to explain why proposed new counsel could not comply with the existing schedule, given that new counsel required only an insubstantial delay. Third, as in ***Prineas***, the interests of other participants in the trial were relevant here. *See* ***id.*** (taking into account the concerns of the victim). As we have seen, the State alerted the circuit court at an earlier court appearance that one of the confidential informants in the case feared Chapman was taking steps to prevent the informant from testifying. The effect of a delay on potential witnesses is a valid concern when considering a request for a continuance. *See* ***State v. O'Connell***, 179 Wis. 2d 598, 616-17, 508 N.W.2d 23 (Ct. App. 1993).

¶38 Additionally, like the defendant in ***Prineas***, Chapman failed to give reasons for a substitution of counsel and an accompanying delay. *See* ***id.***, 316 Wis. 2d 414, ¶24. Chapman offered only "that the relationship between him and [appointed counsel] was such that [Chapman] felt that he would like to retain his own attorney."[6] This explains nothing, and the circuit court reasonably concluded Chapman had not offered any basis for the substitution request. *See* ***id.*** ("court may assume that if there is a compelling reason existing why counsel cannot provide adequate representation it would have been mentioned").

[6] Chapman states in his appellate brief that retained counsel told the circuit court on January 17, 2014, both that "Mr. Chapman felt he did not have a good relationship with [appointed counsel]," and that "the relationship between Mr. Chapman and [appointed counsel] had broken down." Chapman's record citation for these assertions does not lead us to such statements, and we are unable to find such statements elsewhere in the transcript of January 17, 2014.

¶39 In light of the foregoing factors, the circuit court properly exercised its discretion on January 17, 2014, by denying an adjournment of the trial date and ruling that Chapman would be permitted to substitute counsel only if the proposed new counsel was available to try the case as scheduled. The rulings strike an appropriate balance between Chapman's qualified right to counsel of choice, the State's readiness for trial, and the interest in efficient use of judicial resources. Accordingly, Chapman fails to show that the circuit court's rulings on January 17, 2014, provide a basis for postconviction relief.

¶40 Nor does Chapman show that any actions of the circuit court on February 3, 2014, coerced his guilty pleas. Chapman appeared on that date with his attorney of choice and submitted a completed guilty plea questionnaire dated as signed on the previous day. The circuit court allowed Chapman to proceed on the record with the assistance of his retained attorney of choice. While the circuit court deferred ruling on his motion for formal substitution of counsel, the circuit court did not deny the request. Rather, the circuit determined it would not address the request until he completed the guilty plea process, explaining that "if the plea is not successful, then [the court] would only be able to grant [the substitution request] if [retained counsel] w[as] available for trial."

¶41 A plea is coerced "[w]hen the defendant is not given a fair or reasonable alternative to choose from." *See* ***State v. Lackershire***, 2007 WI 74, ¶63, 301 Wis. 2d 418, 734 N.W.2d 23. Here, Chapman had numerous options on February 3, 2014. He could maintain his innocence and prepare for a trial on the scheduled date with the assistance of his appointed counsel. He could maintain his innocence and prepare for a trial on the scheduled date with the assistance of his retained counsel, if his retained counsel was ready and willing to proceed. He could plead guilty, an option that he had been actively exploring for approximately

a month and that he came to court prepared to exercise with the assistance of his chosen counsel. Chapman told the circuit court he wanted to plead guilty.

¶42 Chapman had his attorney of choice by his side when he told the circuit court on February 3, 2014, how he wanted to proceed. Neither Chapman nor his attorney of choice suggested that Chapman was entering guilty pleas because the defense was unprepared for trial. Neither Chapman nor his attorney of choice advised the circuit court that Chapman wanted to try the case. Neither Chapman nor his attorney of choice renewed the request for an adjournment or suggested that Chapman would abandon a plea strategy were he allowed an adjournment. Rather, Chapman personally selected the option of pleading guilty from among the alternatives available to him. Because that decision was within Chapman's control and made with the assistance of his counsel of choice, Chapman's choice was voluntary. *See* ***id.***, ¶65.

¶43 Additionally, the guilty plea colloquy fully conformed with the requirements for a valid plea set forth in ***State v. Bangert***, 131 Wis. 2d 246, 266-72, 389 N.W.2d 12 (1986), ***Brown***, 293 Wis. 2d 594, ¶35, and WIS. STAT. § 971.08. *See* ***State v. Hunter***, 2005 WI App 5, ¶¶9, 19, 278 Wis. 2d 419, 692 N.W.2d 256 (concluding that a comprehensive guilty plea colloquy helps ensure voluntariness of plea even after arguably coercive circuit court action). The circuit court placed Chapman under oath and established that Chapman understood the charges he faced, the elements that the State would be required to prove at a trial, the penalties he faced upon a conviction, and the rights he waived by pleading guilty. Chapman swore that he was entering his guilty pleas freely and voluntarily and that he had not been threatened or promised anything to induce them.

¶44 The circuit court thoroughly questioned both Chapman and his attorney of choice regarding the circumstances surrounding Chapman's guilty pleas. Chapman (still under oath) and his attorney of choice told the circuit court that they had reviewed the guilty plea questionnaire and waiver of rights form together and that Chapman understood the ramifications of his guilty pleas. Chapman swore he was entering guilty pleas because he was, in fact, guilty. Moreover, Chapman's attorney of choice said he believed Chapman was acting freely, voluntarily, and intelligently in pleading guilty and assured the circuit court that counsel was unaware "of any reason in law why the [the court] should not accept [his] client's plea."

¶45 In sum, the record shows Chapman voluntarily entered his pleas with the assistance of his attorney of choice—who gave full-throated assurance to the circuit court that no legal impediment barred acceptance of the pleas. Accordingly, the circuit court acted properly when it denied Chapman's postconviction motion for plea withdrawal without allowing him a hearing. *See* ***Sulla***, 369 Wis. 2d 225, ¶30 (circuit court may, in the exercise of its legal discretion, deny a postconviction motion without a hearing if the record conclusively demonstrates that the defendant is not entitled to relief). We affirm.

By the Court.—Judgment and order affirmed.

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