**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**March 7, 2017**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal Nos. 2016AP10-CR**
**2016AP11-CR**

**Cir. Ct. Nos. 2014CF2187**
**2014CF3053**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**

**DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ARVELL JEROME LOCKHART,**

**DEFENDANT-APPELLANT.**

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APPEALS from judgments and an order of the circuit court for Milwaukee County: REBECCA F. DALLET, Judge. *Affirmed*.

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

¶1 PER CURIAM. Arvell Jerome Lockhart appeals judgments convicting him of substantial battery, as a repeater, misdemeanor disorderly conduct, as a repeater, and felony intimidation of a victim. All counts were

charged as incidents of domestic abuse. Lockhart also appeals the circuit court's order denying his postconviction motion. Lockhart argues that: (1) his plea was not knowingly, intelligently, and voluntarily entered because the circuit court did not adequately inform him about the ramifications of the crimes being charged as incidents of domestic abuse under WIS. STAT. § 968.075 (2015-16);[1] and (2) the crimes should not have been charged as incidents of domestic abuse because he did not share a residence with the victim. We affirm.

¶2 The United States Constitution requires that guilty pleas "be *affirmatively* shown to be knowing, intelligent, and voluntary." *See* ***State v. Brown***, 2006 WI 100, ¶25, 293 Wis. 2d 594, 716 N.W.2d 906. "When a guilty plea is not knowing, intelligent, and voluntary, a defendant is entitled to withdraw the plea as a matter of right because such a plea 'violates fundamental due process.'" ***Id.***, ¶19 (quoted source omitted). For a guilty plea to be knowingly, intelligently, and voluntarily entered, defendants must be notified of the '"direct consequences'" they face as a result of entering their plea. ***State v. Bollig***, 2000 WI 6, ¶16, 232 Wis. 2d 561, 605 N.W.2d 199 (citation omitted). A direct consequence is "one that has a definite, immediate, and largely automatic effect on the range of [a] defendant's punishment." ***Id.*** "In contrast, defendants do not have a due process right to be informed of the collateral consequences of their pleas." ***Id.*** (citation omitted).

¶3 WISCONSIN STAT. § 968.075 addresses the arrest and prosecution of crimes that are domestic abuse incidents. It allows the circuit court to impose a

[1] All references to the Wisconsin Statutes refer to the 2015-16 version unless otherwise noted.

civil surcharge on convicted defendants, but does not increase the potential prison sentence or allow for additional fines. Moreover, it does not, by itself, create criminal liability or punishment for a defendant labeled as a domestic abuse perpetrator. Because § 968.075 did not have a "definite, immediate, and largely automatic effect" on Lockhart's range of punishment, it is not a direct consequence of his plea. Therefore, the circuit court's failure to explain the impact of § 968.075 to Lockhart during the plea colloquy did not render Lockhart's plea unknowing and involuntary.

¶4 Lockhart next argues that the crimes should not have been charged as incidents of domestic abuse under WIS. STAT. § 968.075 because he does not reside with the victim. The statute defines "domestic abuse" as conduct "engaged in by an adult person against his or her spouse or former spouse, against an adult with whom the person *resides or formerly resided* or against an adult with whom the person has a child in common." WIS. STAT. § 968.075(1)(a) (emphasis added). Noting that the statute does not contain a definition for "residence," Lockhart argues that we should apply the definition of "residence" found in WIS. STAT. § 55.01(6t), which governs the protective services system. SECTION § 55.01(6t) provides: "'Residence' means the voluntary concurrence of an individual's physical presence with his or her intent to remain in a place of fixed habitation." Lockhart contends that he had no intent to remain with the victim "in a place of fixed habitation."

¶5 Lockhart's argument is unavailing. Lockhart stipulated that the facts alleged in the complaint could serve as a basis for his plea. The complaint alleged that the victim is Lockhart's "former live-in girlfriend." Where, as here, a term is not defined in a statute, we give it "its 'common, ordinary, and accepted meaning.'" ***State v. Houghton***, 2015 WI 79, ¶61, 364 Wis. 2d 234, 868 N.W.2d

143 (citation omitted). The ordinary meaning of "resides" encompasses a person described as a "live-in girlfriend," as was the victim in the complaint. We reject Lockhart's suggestion that we apply a narrowly circumscribed definition of the word "reside" from a wholly unrelated statute.

*By the Court.*—Judgments and order affirmed.

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