COURT OF APPEALS
DECISION
DATED AND FILED

April 4, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2265-CR **Cir. Ct. No. 2013CF1829**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CARTER T. HOPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed and cause remanded with directions.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Carter Hopson appeals a judgment of conviction for several drug offenses and an order denying his postconviction motion. Hopson contends he is entitled to sentence credit on the present conviction for time he

spent in jail after his extended supervision for a prior offense was revoked. We conclude that revocation and the concomitant reconfinement sentence order severed the connection between his confinement and the present charges, such that he was no longer incarcerated "in connection with the course of conduct for which sentence was imposed" in this case. *See* WIS. STAT. § 973.155(1)(a) (2013-14).[1] Accordingly, we reject Hopson's argument that the severing event was his arrival at the prison where he would be serving the reconfinement term prior to his sentencing in this case, which arrival occurred twenty-two days after he was sentenced upon revocation.

¶2 Hopson also argues he is entitled to plea withdrawal because the circuit court impermissibly participated in plea negotiations. The conduct giving rise to Hopson's "participation" argument involved the circuit court's pretrial efforts to ensure that Hopson was aware of, and had personally rejected, all prior plea offers from the State. We conclude the circuit court's mere act of confirming on the record that the defendant had received and personally rejected all plea offers the state had made—apparently to forestall a subsequent challenge to any resulting conviction based on ***Missouri v. Frye***, 566 U.S. 133 (2012), or ***State v. Ludwig***, 124 Wis. 2d 600, 369 N.W.2d 722 (1985)—does not amount to judicial participation in plea negotiations.

¶3 We therefore affirm the judgment of conviction and order denying postconviction relief. However, during our review of this case, we discovered defense counsel had possibly miscalculated the number of days Hopson had spent

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted, which was the version in effect when Hopson filed his postconviction motion.

in confinement in connection with the present charges, and, consequently, the amount of sentence credit Hopson is owed. We therefore remand this matter to the circuit court to ascertain whether the judgment contains a clerical error and, if so, to correct it. *See infra* n.4.

BACKGROUND

¶4 Hopson was charged in a criminal complaint and an Information with five counts of delivering less than one gram of cocaine, one count of possession with intent to deliver between five and fifteen grams of cocaine, and one count of obstructing an officer, all charges as a repeat offender. The charges arose out of various drug transactions with confidential informants in November 2013, the last of which occurred on November 19 and resulted in Hopson's arrest while a large quantity of crack cocaine was allegedly in his possession. Hopson allegedly attempted to hide that evidence immediately prior to his arrest, and he repeatedly shouted obscenities and threats following an interview with police at the Green Bay Police Department.

¶5 Following his arrest, on December 30, 2013, Hopson was revoked from extended supervision on a prior conviction for armed robbery.[2] However, he remained confined in the Brown County Jail until January 21, 2014, when he was transported to and received at the Dodge Correctional Institution. Hopson's

[2] As the State observes, the record does not contain detailed information or documents pertaining to Hopson's prior conviction. The information relating to that sentence contained in this opinion has been gleaned from the record documents in this case (most notably the presentence investigation report), defense counsel's statements at sentencing, and publicly available CCAP records for Milwaukee County case No. 2001CF4931. Online CCAP records show that Hopson was sentenced in 2003 to an eight-year term of initial confinement with four years' extended supervision based upon his guilty plea to the armed robbery charge, with a concurrent sentence on a felon in possession of a firearm charge.

reconfinement sentence on the prior conviction ended on October 21, 2014, after which he was again released to extended supervision. Upon his release, Hopson was placed in custody in connection with the present drug charges.

¶6 Meanwhile, Hopson proceeded to a jury trial on the present drug charges, which trial commenced on October 15, 2014. Immediately before the trial began, the circuit court asked the prosecutor whether she had provided Hopson's defense counsel with a letter summarizing all of the State's plea offers, so that Hopson could initial it indicating that all such offers had been rejected. After explaining the ***Frye*** rule,[3] the circuit court stated its desire to ensure such a letter was part of the record. The State was unable to produce such a letter, so the prosecutor orally recited the terms of all offers the State had made to resolve Hopson's case. Defense counsel, who did not object to this process, stated he had communicated to Hopson both offers he received while he was Hopson's attorney. The court then asked Hopson to "confirm with me that you wish to reject those offers, and you understand that if this case goes adverse to you, … that I could sentence you up to 49 years in the Wisconsin State Prison System?" Hopson answered, "Yes" and further responded that he wished to proceed to trial.

[3] "[A]s a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." ***Missouri v. Frye***, 566 U.S. 133, 145 (2012). The circuit court here did not refer to ***Frye*** by name, and Hopson posits the court may have been referring to ***State v. Ludwig***, 124 Wis. 2d 600, 369 N.W.2d 722 (1985), in which our supreme court held defense counsel rendered ineffective assistance by failing to inform the defendant of a plea offer in a manner that made clear it was the defendant's decision whether to accept or reject the offer. For our purposes, it makes no difference whether the circuit court was referring to ***Frye***, ***Ludwig***, or both decisions.

¶7 On the second day of trial, following a break in the proceedings, the circuit court was handed a plea questionnaire and waiver of rights form. Hopson's counsel then recited the terms of the plea agreement the parties had reached. Hopson agreed to plead guilty to the five counts of delivering less than one gram of cocaine as a repeater. In exchange, the State agreed to dismiss and read in the possession with intent and obstruction charges. The circuit court accepted Hopson's pleas following a colloquy.

¶8 At the sentencing hearing, Hopson's counsel stated Hopson was entitled to seventy-nine days' sentence credit. Defense counsel arrived at this calculation by counting the number of days between Hopson's arrest (November 19, 2013) and the date his extended supervision on the armed burglary conviction was revoked (December 30, 2013).[4] Counsel then added the time between when Hopson finished the revocation sentence (October 21, 2014) and when he was sentenced on the drug charges (December 15, 2014). The circuit

[4] Hopson's defense counsel apparently miscalculated the number of days between Hopson's arrest and the date his extended supervision was revoked. Forty-one days elapsed between November 19 and December 30, 2013, and yet defense counsel counted only twenty-four of these days for purposes of calculating Hopson's sentence credit. We have not discovered anything in the record to explain this discrepancy. The remaining amount of sentence credit accrued after Hopson's release on the prior conviction, and we perceive no error in defense counsel's fifty-five-day calculation there.

Counsel's total seventy-nine-day calculation was not corrected by the State and was accepted by the circuit court at sentencing. Postconviction counsel does not raise any issue relating to the amount of sentence credit to which Hopson is entitled for his confinement prior to December 30, 2013. Under these circumstances, and without the benefit of briefing by the parties, we think it appropriate to remand for the circuit court to ascertain whether the judgment of conviction contains a clerical error related to the amount of sentence credit to which Hopson is entitled for his confinement between November 19 and December 30, 2013. *See* ***State v. Prihoda***, 2000 WI 123, ¶¶17, 31, 239 Wis. 2d 244, 618 N.W.2d 857. If the court concludes defense counsel mistakenly calculated the amount of sentence credit owed to Hopson during that period, it shall amend the judgment of conviction to reflect the correct amount of sentence credit due.

court accepted this calculation and ordered seventy-nine days' sentence credit against a total sentence of twenty-four years' imprisonment, consisting of consecutive sentences of five years' initial confinement and three years' extended supervision on each of three counts. The circuit court ordered probation on the remaining counts. The court did not specify whether the sentences would be concurrent or consecutive to any other sentences Hopson was currently serving.

¶9 Hopson filed a motion for postconviction relief, arguing he was entitled to plea withdrawal based on the circuit court's "improperly interjecting itself" into plea negotiations. Hopson also sought additional sentence credit for the time period between his revocation on December 30, 2013, and January 21, 2014—the date he was received at the Dodge Correctional Institution. Hopson argued his defense counsel's sentence credit calculation was based on a "misinterpretation of the 'severing event' that stopped dual credit" from accruing for both the present charges and his prior conviction. Rather, Hopson asserted that, under WIS. STAT. § 304.072(4), the connection between his confinement on the current charges was not severed until he was received at the correctional institution.

¶10 The circuit court denied Hopson's motion by written order following a nonevidentiary hearing. Hopson appeals, challenging the circuit court's determination on both aspects of his postconviction motion.

DISCUSSION

I. Sentence Credit

¶11 We first address Hopson's sentence credit argument. A convicted offender is entitled to credit toward his or her sentence "for all days spent in

custody in connection with the course of conduct for which sentence was imposed." WIS. STAT. § 973.155(1)(a). The meaning of the statute is clear; it requires that "credit … be given on the eventual sentence for all periods of custody: From arrest to trial, the trial itself, and from the date of conviction to sentence." ***State v. Beets***, 124 Wis. 2d 372, 377, 369 N.W.2d 382 (1985). Determining whether an inmate is entitled to sentence credit involves the application of the statute to a particular set of facts, which presents a question of law. ***State v. Rohl***, 160 Wis. 2d 325, 329, 466 N.W.2d 208 (Ct. App. 1991).

¶12 Put simply, Hopson contends the circuit court erred by determining that the revocation of Hopson's extended supervision relating to the armed robbery severed the connection between Hopson's confinement and the present charges. Instead, he claims the point of severance is his being received at the Dodge Correctional Institution to serve his reconfinement sentence on the armed robbery conviction. Because Hopson was revoked on December 30, 2013, but not received at the Dodge Correctional Institution until January 21, 2014, he argues he is entitled to an additional twenty-one days of sentence credit toward his present sentence for his confinement in the Brown County Jail between those dates.

¶13 The State responds that not only is Hopson not entitled to the additional twenty-one days' sentence credit he seeks, but he received too much sentence credit in the first place. Importantly, the State observes that dual credit is only granted for sentences that are concurrent. *See* ***Rohl***, 160 Wis. 2d at 330. The State argues Hopson's revocation sentence was completed at the time of his December 15, 2014 sentencing on the present drug charges. Thus, the State contends, Hopson's sentence in this case could not be ordered consecutive or concurrent to any other sentence (including the revocation sentence), because Hopson was not serving any other sentence at the time he was sentenced on the

present charges. For these reasons, the State contends the credit Hopson received toward the armed robbery sentence for the time spent in confinement prior to revocation on December 30, 2013, is all the sentence credit to which he is entitled. The State argues Hopson was, in fact, erroneously awarded credit toward his present sentence for the time he spent in confinement between November 19 and December 30, 2013.[5]

¶14 The State's argument proceeds from a factually incorrect premise. Contrary to the State's assertion, Hopson's sentence on the armed robbery conviction had not terminated at the time he was sentenced in connection with the current drug charges. Although the reconfinement portion of Hopson's prior sentence had been completed, the presentence report in this case states Hopson's extended supervision term would continue until October 20, 2016. Thus, upon the expiration of his reconfinement term, Hopson was again released to extended supervision, *see* WIS. STAT. § 302.113(9)(b), and remained in the legal custody of the Department of Corrections, *see* § 302.113(8m)(a).[6]

¶15 Hopson's argument has its own flaws, however. It is true Hopson's sentences on both the drug charges and the armed robbery charge were presumed to run concurrently because the circuit court did not indicate otherwise. *See* ***State v. Willett***, 2000 WI App 212, ¶2 n.2, 238 Wis. 2d 621, 618 N.W.2d 881. Hopson,

[5] The State does not seek to reduce the award of credit already granted to Hopson, but merely contends he is not entitled to any additional sentence credit as a result of its reasoning. The State also notes on appeal that Hopson's postconviction and appellate counsel stated at sentencing that Hopson received full credit on his revocation sentence for all days spent in custody from his November 19, 2013 arrest to his January 21, 2014 transfer to prison.

[6] Unfortunately, on appeal, the State does not alternatively address Hopson's principal argument regarding whether dual credit should be awarded for days spent in custody between Hopson's revocation and his transfer to prison to serve the reconfinement sentence.

by virtue of his concurrent sentences, was entitled to dual credit for the time he spent in custody prior to his revocation sentence under WIS. STAT. § 302.113(9)(am) that occurred on December 30, 2013. *See* ***Rohl***, 160 Wis. 2d at 330; *see also infra* ¶18 & n.7. This is because Hopson's extended supervision was revoked for (and therefore his reconfinement on the armed robbery conviction arose from) the same "course of conduct" as his present sentence on drug charges.

¶16 Hopson is wrong, though, in contending that the event severing his custody in relation to the present drug charges was his being physically received at the Dodge Correctional Institution as opposed to his earlier revocation. Hopson relies on ***Beets*** and ***State v. Presley***, 2006 WI App 82, 292 Wis. 2d 734, 715 N.W.2d 713, as well as WIS. STAT. § 304.072(4). The connection he draws between these authorities—and how he believes they apply to his case—does not withstand scrutiny.

¶17 "Under ***Beets***, a defendant is not entitled to sentence credit for periods of presentence custody during which the defendant was serving an unrelated sentence." ***State v. Trepanier***, 2014 WI App 105, ¶18, 357 Wis. 2d 662, 855 N.W.2d 465. Hopson reasons that, under ***Beets***, the beginning of the "unrelated sentence" is the severing event for concurrent sentences, and that, under ***Presley***, "a reconfinement hearing is a 'sentencing' and … it, not the revocation, severs the connection between the charges." *See* ***Presley***, 292 Wis. 2d 734, ¶10. But because Hopson asserts he never received a reconfinement hearing per se, he contends ***Presley*** does not control and WIS. STAT. § 304.072(4) dictates that the severing event is his being received at the Dodge Correctional Institution in connection with the service of his reconfinement on the armed robbery conviction.

¶18 Hopson's argument fails. As an initial matter, conspicuously absent from his argument is any mention or acknowledgement of when he was ordered to return to prison for a period of reconfinement on his armed robbery conviction. This omission is particularly odd, as the case law seems to make clear that the severing event—and the end of any dual sentence credit—is when the offender is sentenced (or "resentenced," as it may be) on either of the concurrent sentences. *See* ***Presley***, 292 Wis. 2d 734, ¶15. Obviously, such an administrative order for reconfinement must have occurred in this case, and it must have preceded his arrival at the prison. While the record in this case does not enable our definitively answering this question, *see supra* n.2, all indications are that "sentencing" on revocation occurred immediately upon the agency's determination to revoke his extended supervision—i.e., on December 30, 2013.[7] In any event, and notably,

[7] In addition to December 30, 2013, being the only relevant date Hopson has focused on in terms of his revocation, both logic and the statutory and regulatory scheme regarding reconfinement sentences suggest this was the only date on which Hopson could have been sentenced upon the revocation of his extended supervision. As explained further *infra* ¶19, currently, revocation from extended supervision may be handled by either the Department of Administration's Division of Hearings and Appeals (DHA) or by the Department of Corrections (DOC) if the offender waives a revocation hearing. *See* WIS. STAT. § 302.113(9)(ag), (am). Although the relevant administrative regulations separately address both revocation hearings and reconfinement hearings (thereby suggesting these determinations may occur at separate times), following the regulatory roadmap establishes this is only true if the offender waives the revocation hearing but demands a reconfinement hearing.

If an offender demands a final revocation hearing, the hearing is held before a DHA administrative law judge (ALJ), *see* WIS. ADMIN. CODE § DOC 331.06 (June 2013), who simultaneously decides both whether revocation is appropriate and the corresponding reconfinement sentence, *see* WIS. ADMIN. CODE § HA 2.05(7)(f) (May 2010) (requiring a revocation decision of an administrative law judge within the Department of Administration to include "a determination of the period of reconfinement"). Under this scenario, there is no separate reconfinement hearing, and issues pertaining to the length of the reconfinement sentence are disposed of during the revocation hearing.

(continued)

Hopson does not argue that the order regarding his recommitment was rendered at any other time.

¶19 Hopson also places undue emphasis on the identity of the decisionmaker responsible for his reconfinement determination. As his postconviction motion noted, in 2009 the legislature eliminated the statutory provision requiring the circuit court to determine the reconfinement period and shifted that authority to executive branch entities. *See* 2009 Wis. Act. 28, § 2726.

If an offender waives a revocation hearing, the DOC secretary makes the determination of whether revocation is warranted. *See* WIS. ADMIN. CODE § DOC 331.07(3). The offender is nonetheless entitled to a reconfinement hearing, but may waive such a hearing. WIS. ADMIN. CODE § DOC 331.13(2), (3). If the offender demands a reconfinement hearing, such a hearing is held pursuant to WIS. ADMIN. CODE § HA 2.06 (apparently, as it pertains to a sentence upon revocation of extended supervision, applying the criteria set forth in § HA 2.05(7)(f)). Under this scenario, the secretary's revocation determination and the ALJ's determination of the reconfinement sentence may occur at different times.

The administrative regulations are less explicit regarding what happens when an offender waives both the revocation and reconfinement hearings. However, tracing the statutory and regulatory framework, it again appears that the revocation and reconfinement determinations occur simultaneously under this scenario. In this situation, the DOC is responsible for sentencing. *See* WIS. STAT. § 302.113(9)(ag), (am). When a revocation is proposed, the investigating agent must make a recommendation regarding the amount of time the offender should spend in reconfinement. *See* WIS. ADMIN. CODE §§ DOC 331.04(3), (4); 331.13(4), (5); Although WIS. ADMIN. CODE § DOC 331.13(3) states that an offender may waive the reconfinement hearing, it does not clearly identify who then makes the determination as to the amount of a reconfinement sentence. The only logical authority to do so within the DOC, consistent with the regulatory framework, is the DOC secretary, at the same time that he or she makes the revocation determination under WIS. ADMIN. CODE § DOC 331.07(3). There is no other provision within WIS. ADMIN. CODE ch. DOC 331 for matters to be referred to the DOC secretary for determination, and the secretary will have all necessary information to also make a reconfinement determination, including the sentencing recommendation of the investigating agent.

Here, by Hopson's own account, he did not receive a reconfinement hearing. That must be because he either: (1) demanded a revocation hearing, at which time the ALJ imposed a reconfinement sentence; or (2) waived both his revocation and reconfinement hearings, as a result of which the DOC secretary made a determination regarding his reconfinement, presumably at the same time he concluded Hopson had violated the conditions of his extended supervision. In either case, the reconfinement sentence in this case must have been handed down on the date Hopson was revoked from his extended supervision—namely, on December 30, 2013.

The authorities on which Hopson relies for his argument (***Beets*** and ***Presley***) arose during the era when circuit courts determined reconfinement periods subsequent to the agency's revocation of parole or extended supervision. Presently, if an inmate desires a revocation hearing, the DHA determines whether the inmate should be revoked and how much of the inmate's extended supervision will be spent in confinement. *See* WIS. STAT. § 302.113(9)(ag), (am) (2015-16); *see also supra* n.7. If the inmate waives a revocation and reconfinement hearing before the DHA (as Hopson asserts occurred here), the DOC decides those matters. *See* WIS. STAT. § 302.113(9)(ag), (am) (2015-16); *see also supra* ¶18 n.7. But the point here is that *someone* made the revocation and reconfinement decisions prior to Hopson's arrival at the Dodge Correctional Institution, and those decisions apparently occurred on December 30, 2013.

¶20 WISCONSIN STAT. § 304.072 does not compel a different result. When an inmate is revoked from extended supervision and subject to reconfinement, the order returning the person to prison "shall provide the person whose extended supervision was revoked with credit in accordance with [WIS. STAT. §§] 304.072 and 973.155." WIS. STAT. § 302.113(9)(am). Section 973.155 is, of course, the general sentence credit statute. Section 304.072 relates to the tolling of a period of probation, extended supervision, or parole when an alleged violation has occurred. If the alleged violation is not proven, the period between the alleged violation and the revocation determination is treated as service of the sentence—presumably regardless of *where* the prisoner was physically located during that time. *See* § 304.072(2). However, when a violation has been proven, the sentence of a person on extended supervision "resumes running on the day he or she is received at a correctional institution *subject to sentence credit for the period of custody in a jail, correctional institution or any other detention facility*

pending revocation according to the terms of s. 973.155." Subsec. 304.072(4) (emphasis added).

¶21 The plain language of WIS. STAT. § 304.072(4) requires that we reject Hopson's sentence credit claim. Under that subsection, he is entitled to sentence credit under WIS. STAT. § 973.155 only for the time he was located in the Brown County Jail "pending revocation." Hopson was revoked and, under the relevant administrative code provisions, *see supra* ¶18 n.7, presumably given a reconfinement term on December 30, 2013, which had the effect of severing his custody thereafter from the present drug charges. Hopson's argument requires that we isolate subsection (4) from the remainder of the statute and ignore its context, neither of which is a proper approach to statutory interpretation. *See* ***State ex rel. Kalal v. Circuit Court for Dane Cty.***, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Hopson is not entitled to additional, dual sentence credit for his confinement between December 30, 2013 and January 21, 2014.

II. Plea Withdrawal/Judicial Participation in Plea Negotiations

¶22 Hopson next claims he is entitled to plea withdrawal because, just before trial, the circuit court improperly involved itself in the plea negotiations with the State. A defendant who seeks to withdraw a plea after sentencing must show by clear and convincing evidence that a manifest injustice would result if withdrawal was not permitted. ***State v. Hunter***, 2005 WI App 5, ¶5, 278 Wis. 2d 419, 692 N.W.2d 256. A manifest injustice has occurred, among other ways, when a defendant demonstrates that he or she did not knowingly, intelligently, and voluntarily enter the plea. ***State v. Lopez***, 2010 WI App 153, ¶7, 330 Wis. 2d 487, 792 N.W.2d 199.

¶23 Whether a plea was voluntarily entered is a question of constitutional fact. ***Hunter***, 278 Wis. 2d 419, ¶6. Under this standard, we will affirm the circuit court's findings of evidentiary or historical fact unless they are clearly erroneous. ***Id.*** However, we independently determine whether the established facts give rise to a constitutional violation that entitles a defendant to withdraw his or her plea. ***Id.*** In this case, the relevant facts are a matter of record and are undisputed; the circuit court's statements are fully captured by the trial transcript.

¶24 For various reasons, most of which relate to the protection of the defendant's rights, "there is an absolute prohibition of judicial involvement in the negotiations that lead up to a plea bargain." ***State v. Williams***, 2003 WI App 116, ¶16, 265 Wis. 2d 229, 666 N.W.2d 58. "Accordingly, a defendant who has entered a plea, following a judge's participation in the plea negotiation, is conclusively presumed to have entered his plea involuntarily and is entitled to withdraw it." ***Id.*** In ***Williams***, the circuit court invited the parties and their representatives to "have a little chat in chambers," which was held off the record and during which the court provided "assistance or urging" that the defendant accept a plea offer from the government. ***Id.***, ¶3.

¶25 Following ***Williams***, this court was required to determine whether a circuit court's commentary on the strength of the prosecution's case was tantamount to "judicial participation in plea negotiations." *See* ***Hunter***, 278 Wis. 2d 419, ¶¶1, 2. We "decline[d] to expand the ***Williams*** rule to encompass all comments a judge might make regarding the strength of the State's case or to the advisability of a defendant giving consideration to a disposition short of trial." ***Hunter***, 278 Wis. 2d 419, ¶8. ***Williams*** is supposed to be a bright-line rule, and drawing the line at anything less than direct participation in plea negotiations

would engender confusion amongst circuit court judges, who "would not know when the line had been crossed or how to avoid crossing it short of avoiding any discussion with a defendant whatsoever regarding the likely future course of the criminal proceedings." ***Hunter***, 278 Wis. 2d 419, ¶8.

¶26 Here, immediately prior to the trial commencing, the circuit court stated:

> Mr. Hopson, the … supreme court has said that … it's necessary that the defendant receive all offers communicated to him by the State by his lawyer and that the defendant rejects [them]. So there was a case where … apparently it was established that the lawyer hadn't communicated this offer, and as a result of that, the supreme court set aside a verdict and said that the defendant was entitled to accept that offer. So now the trial courts do as I'm doing. Before we get started, we make sure that a letter is made part of the record and then … I would seal it.

Defense counsel then stated he had reviewed with Hopson the two plea offers he received during his representation, both of which Hopson had rejected. However, based upon defense counsel's representation that he had not received a letter from the State memorializing all plea offers, the prosecutor volunteered to state the offers orally on the record. The circuit court permitted this, and the prosecutor proceeded without objection. The court then asked defense counsel whether he had communicated to Hopson the two plea offers that occurred during his representation. Hopson's attorney confirmed that he had discussed both offers with Hopson, and the circuit court confirmed with Hopson that he was aware of the maximum penalties associated with the charged offenses and that he had rejected the State's offers.

¶27 We conclude the circuit court's mere act of creating a record that the defendant had received and personally rejected all plea offers the State made does

not amount to judicial participation in plea negotiations. Unlike the judge in ***Williams***, the judge here did not host an off-the-record plea negotiation in chambers. The court did not make any statements or promises about any considerations relevant to sentencing, other than confirming that Hopson was aware of the maximum penalties he faced for the charged offenses. The court was uninvolved with, and unaware of, the plea agreement Hopson ultimately reached until the court was handed the plea questionnaire and waiver of rights form in the middle of the trial. Even Hopson acknowledges that "[n]othing as blatant as what happened in the [***Williams***] case is at issue here."

¶28 Hopson contends certain language in ***Hunter*** suggests that a court has impermissibly involved itself in plea negotiations merely by becoming aware of the terms of any plea offers from the State. Specifically, he points to ***Hunter***'s statement that there was "no suggestion in the present record that the trial court was a party *or even privy to* any plea negotiations between the State and Hunter until the parties announced to the court … that they had reached a plea agreement." ***Hunter***, 278 Wis. 2d 419, ¶11 (emphasis added). Placed in context, however, it becomes clear that this language does not establish the rule Hopson proposes. The sentence in which it is located begins with the phrase "by contrast," and followed immediately after ***Hunter***'s discussion of the facts in ***Williams***. *See* ***Hunter***, 278 Wis. 2d 419, ¶¶10-11. In other words, the ***Hunter*** court was merely distinguishing the circuit court's conduct in that case from the circuit court's conduct in ***Williams***.

¶29 According to ***Hunter***, ***Williams*** was distinguishable because the circuit court in ***Hunter***, unlike the court in ***Williams***: (1) "did not convene an impromptu settlement conference"; (2) "did not make or solicit specific offers of potential sentence ranges"; and (3) did not give the parties "any input whatsoever

regarding what it considered an appropriate disposition of the charge Hunter was facing." ***Hunter***, 278 Wis. 2d 419, ¶11. The circuit court here did not do any of those things, either. The fact the circuit court did not know of the plea offers in ***Hunter*** prior to an agreement being reached certainly supported the notion that the circuit court did not improperly participate in plea negotiations, but ***Hunter*** cannot be read to say that any time a circuit court becomes aware of a plea offer that does not culminate in an agreement, it has violated the ***Williams*** rule. There certainly is no basis in ***Williams*** itself for such a conclusion.

¶30 Hopson suggests the circuit court's prompting for an on-the-record recitation of the plea offers in this case might have caused a panicked Hopson to plead out in the middle of trial. Hopson posits that the circuit court's having knowledge of the State's plea offers (and corresponding sentencing recommendations) somehow "raised the specter that [the court] would now make those rejected offers a 'floor' to any sentence, if he lost at trial." Hopson states that, reflecting on this during trial, he might have pled "in order to try to save some chance of a sentence being at least in the ball park of the prior offers, and not much harsher."

¶31 As the State observes, this narrative is entirely hypothetical and lacks any plausible connection between the circuit court's actions and Hopson's decision to accept a plea. In any event, and as already explained, ***Williams*** expressly applies only to direct judicial participation in the plea bargaining process itself. ***Hunter***, 278 Wis. 2d 419, ¶12. The rule does not cover mere awareness of prior plea offers, such as occurred here. "There is no suggestion in [***Williams***'] analysis that the conclusive presumption of involuntariness should extend to any and all comments from the bench that might later be characterized as having prompted a defendant to enter into a plea agreement with the State." ***Hunter***, 278

Wis. 2d 419, ¶12. Like the ***Hunter*** court, we "decline to blur the ***Williams*** bright-line rule by extending it to apply to the present facts." *See* ***Hunter***, 278 Wis. 2d 419, ¶12. Nothing the circuit court did here can reasonably be said to have "destroyed the voluntariness of the plea" Hopson made, which is the principal focus of the ***Williams*** rule. *See* ***Williams***, 265 Wis. 2d 229, ¶11.

By the Court.—Judgment and order affirmed and cause remanded with directions.

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