COURT OF APPEALS
DECISION
DATED AND FILED

November 21, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP1044 **Cir. Ct. No. 2012CF2859**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CLIFTON LEE WILLIAMS, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: ELLEN R. BROSTROM, Judge. *Affirmed.*

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

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. Clifton Lee Williams, Jr., *pro se*, appeals from an order denying his collateral attack on a judgment convicting him of one count of

second-degree reckless homicide, as a party to a crime, and two counts of felon in possession of a firearm. Williams argues that: (1) he should have been convicted of two charges, not three charges, because he entered guilty pleas to only two charges; (2) his plea agreement was void as a matter of public policy; (3) trial counsel ineffectively represented him by failing to advise him that the plea agreement was void as a matter of public policy; (4) the prosecutor violated the plea agreement by recommending the maximum sentence; (5) the plea colloquy was deficient; (6) he was sentenced on the basis of inaccurate information; and (7) postconviction counsel provided him ineffective assistance during his direct appeal by failing to raise these issues. We reject Williams's arguments. Accordingly, we affirm.

¶2 Williams first argues that the circuit court improperly convicted him of three charges because he said "guilty" only twice during the plea colloquy. Williams relies on language in the jury instruction that provides that the circuit court "must be satisfied that the defendant understands *the charge* to which the guilty plea is being entered." *See* WIS JI—CRIMINAL SM-32 at 6. Williams contends that the jury instruction's reference to "the charge"—singular—means that the court must ask the defendant separately about each charge. We disagree.

¶3 During the colloquy, Williams entered a guilty plea to second-degree reckless homicide. The circuit court then asked Williams what his plea was to "these two counts of possession of a firearm by a felon." Williams said "guilty." The court then found him guilty of all three counts. We agree with the State's analysis rejecting Williams's claim that this process was not proper:

> Although Williams does not identify the legal basis for this claim, the State understands him to be arguing that his guilty plea to one or both of the felon-in-possession charges is not knowing, intelligent and voluntary because the court

> asked him to plead to the two felon-in-possession charges at once.
>
> ….
>
> It is not reasonable to infer [from the language of the jury instruction] that a court cannot group, for purposes of receiving a plea, two identical charges after ascertaining that the defendant fully understands them. Williams cites no authority—nor can the State identify any—holding that a court cannot group two identical charges for the entry of [a] plea after ascertaining that the defendant understands the elements and the factual bases for each.

We reject Williams's argument that the circuit court improperly convicted him on all three counts.

¶4 Williams next argues that the plea agreement was void as a matter of public policy because it allowed the prosecutor to adhere to the terms of the agreement only if, in the prosecutor's judgment, Williams cooperated with the police. Williams contends that the agreement thus allowed the prosecutor to renege on his promise based on the prosecutor's "beliefs," rather than facts.

¶5 "[A] plea agreement is analogous to a contract and, therefore, we draw upon contract law principles to interpret a plea agreement." ***State v. Toliver***, 187 Wis. 2d 346, 354, 523 N.W.2d 113 (Ct. App. 1994). "The analogy to contract law, however, is not entirely dispositive because a plea agreement also implicates a defendant's due process rights." ***Id.*** (citation omitted).

¶6 At the plea hearing, the prosecutor explained the terms of the plea agreement. In exchange for Williams's guilty plea to the charge in the amended complaint of second-degree reckless homicide by use of a dangerous weapon as a party to a crime, and his plea to the two counts of felon in possession of a firearm, the State agreed to dismiss the armed robbery charge, agreed not to seek additional exposure with the repeater allegations for the two counts of felon in possession of

a firearm, and agreed to recommend that Williams serve a substantial period of imprisonment, leaving the length of the sentence to the circuit court. The prosecutor further explained:

> However, this offer is contingent upon the following:
>
> That the defendant be willing to be debriefed by [the] Milwaukee Police Department about the other co-actors involved in the homicide.
>
> It is expected that the defendant be willing to tell the Milwaukee police the truth as to who was involved, what the plan was and who did the shooting.
>
> The state, as represented by myself, Assistant District Attorney Kevin Shomin, will decide whether the debriefing given by the defendant is, in fact, the truth.
>
> So essentially for Mr. Williams to hear, I am the sole arbiter as to whether or not he's being truthful.
>
> And essentially that's important, judge, because the relevance of this offer letter states that if the state believes the defendant is not telling the truth, the state will be free to make any recommendation at the time of sentencing, including the right to recommend the maximum period of 30 years of confinement followed by 20 years of extended supervision.

¶7 The agreement stated that it was contingent on Williams being truthful and cooperating with the police. The agreement also clearly stated the prosecutor would make the determination about whether Williams was being truthful. A plea agreement may place an obligation on a defendant and set forth the consequences to the defendant for failing to comply with the obligation, as it did here. *See* ***id.*** at 358. Williams has pointed to nothing to support his argument that there is a public policy against making a plea agreement contingent on a defendant's truthful cooperation with the police. Therefore, we reject Williams's argument that the plea agreement violates public policy.

¶8 Williams next argues that trial counsel provided him with ineffective assistance of counsel because he did not advise Williams that the plea agreement was void as a matter of public policy. As we previously explained, the plea agreement was not void as a matter of public policy. Counsel did not render ineffective assistance by failing to raise an issue that is meritless. *See* ***State v. Golden***, 185 Wis. 2d 763, 771, 519 N.W.2d 659 (Ct. App. 1994).

¶9 Williams next contends that the prosecutor violated the plea agreement by recommending the maximum sentence. Again, we disagree. Williams knew exactly what he had bargained for when he decided to go forward with the plea agreement: the agreement was contingent on Williams providing truthful information to the police about his co-actors. The prosecutor did exactly what he said he would: he made a determination about Williams's veracity during Williams's contacts with the police subsequent to the plea, concluded that Williams did not adhere to the agreement by being truthful, and then refused to make the bargained for sentencing recommendation. The prosecutor did not breach the plea agreement by recommending the maximum sentence.

¶10 Williams next argues that the plea colloquy was defective because he gave short "yes" and "no" answers to the circuit court in violation of ***State v. Brown***, 2006 WI 100, ¶73, 293 Wis. 2d 594, 716 N.W.2d 906.[1] He contends that ***Brown*** prohibits a circuit court from accepting only perfunctory answers from a

[1] Williams does not detail this claim in his appellant's brief, instead referring us to his postconviction motion. Given Williams's *pro se* status, we will overlook Williams's failure to follow our briefing rules set forth in WIS. STAT. RULE 809.19, and consider the merits of the claim.

defendant when the court is ascertaining whether the defendant is knowingly, intelligently, and voluntarily entering a plea. ***Id.***

¶11 To be entitled to a plea hearing on the ground that the plea colloquy was defective, Williams is required to show that the circuit court did not comply with the requirements of WIS. STAT. § 971.08,[2] and ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Williams has not shown that the circuit court's colloquy fails to meet the ***Bangert*** requirements. Although Williams gave simple answers to the court's questions, the circuit court ascertained that Williams understood the elements of the crimes, the maximum penalties he faced and the rights he was waiving by entering a plea. The circuit court conducted a personal colloquy with Williams and also established that Williams had reviewed a plea questionnaire and waiver-of-rights form with his lawyer and understood the information on the form. As for ***Brown***, Williams reads it too broadly. ***Brown*** held that in a situation where the defendant is illiterate, the defendant did not complete a plea questionnaire and waiver-of-rights form, "and where there was no rendition by Brown's attorney of a meaningful discussion of the defendant's rights, the court should have done more to show that the defendant understood the rights he was giving up by entering a plea." ***Id.***, 293 Wis. 2d 594, ¶76. Those circumstances do not exist here. Therefore, we reject this argument.

¶12 Williams next argues that he had a right to be sentenced based on the facts and accurate information, not the prosecutor's "beliefs" about his veracity. This argument is two-fold. First, Williams argues that the prosecutor's subjective

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

belief about his truthfulness in dealing with the police should not have been considered by the sentencing court. Second, Williams takes issue with the prosecutor's language when the prosecutor said "I think," or "I believe," during the sentencing argument. These arguments are meritless. The prosecutor's opinions about Williams's veracity, character and other matters are all fair game for sentencing argument.

¶13 Finally, Williams argues that he received ineffective assistance of postconviction counsel because his postconviction counsel should have raised the issues discussed above during his direct appeal. None of these arguments would have been successful if postconviction counsel had raised them during postconviction or appellate proceedings during Williams's direct appeal. An attorney does not render ineffective assistance of counsel by failing to raise meritless issues. *See* ***Golden***, 185 Wis. 2d at 771. Moreover, Williams has not shown that his current claims are clearly stronger than the issues raised during his direct appeal. ***State v. Romero-Georgana***, 2014 WI 83, ¶46, 360 Wis. 2d 522, 849 N.W.2d 668 (a claim of ineffective assistance of postconviction counsel will lie only where the defendant can show that the claims the defendant raises are clearly stronger than the issue raised by counsel on direct appeal).

By the Court.—Order affirmed.

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