COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2018

Diane M. Fremgen
Acting Clerk of Court of Appeals

Appeal No. 2017AP659-CR **Cir. Ct. No. 2015CM1673**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

AMANDA L. LONGLEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: ELLEN K. BERZ, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.[1] Amanda Longley appeals the circuit court's judgment convicting her of one count of disorderly conduct involving domestic

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 2015-16 version.

abuse and one count of misdemeanor battery. Longley also appeals the court's order denying postconviction relief. Longley seeks plea withdrawal. Her request for plea withdrawal is based on the argument that case law subsequent to ***State v. Kosina***, 226 Wis. 2d 482, 595 N.W.2d 464 (Ct. App. 1999), requires reconsideration of the ***Kosina*** holding that a firearms possession prohibition is a collateral consequence of a plea that defense counsel need not discuss with a defendant. For the reasons below, I reject this argument and affirm.[2]

¶2 Longley pled guilty to the crimes noted above. After sentencing, Longley filed a postconviction motion seeking to withdraw her plea. Longley's motion allegations included: that counsel failed to inform Longley that her plea to a domestic abuse crime would result in Longley being prohibited from possessing firearms; that Longley was unaware of the prohibition; and that, had she been aware of this prohibition, Longley would not have pled guilty. The circuit court denied Longley's motion.

¶3 Longley acknowledges that, under ***Kosina***, this type of firearms prohibition is a collateral consequence of a plea and that, ordinarily, a defendant cannot withdraw a plea on the ground that counsel failed to inform the defendant of this collateral consequence. *See* ***id.*** at 484-87, 488-89. Longley argues, however, that ***Kosina*** must be reconsidered in light of subsequent case law, namely, the United States Supreme Court's decision in ***Padilla v. Kentucky***, 559

[2] To the extent that Longley means to make other arguments, those arguments are not developed and I decline to consider them. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not consider inadequately developed arguments).

U.S. 356 (2010), and the Wisconsin Supreme Court's decision in ***State v. LeMere***, 2016 WI 41, 368 Wis. 2d 624, 879 N.W.2d 580. I disagree.

¶4 In ***Padilla***, the Supreme Court held that defense counsel must inform a client whether a plea carries a risk of deportation. *See* ***Padilla***, 559 U.S. at 374. The ***Padilla*** Court appeared to sidestep the question of whether the risk of deportation was a collateral consequence of a plea, and instead relied on the unique and serious nature of deportation. *See* ***id.*** at 365-66, 373-74. The Court compared deportation to "'banishment or exile.'" ***Id.*** at 373 (quoted source omitted).

¶5 In ***LeMere***, our state supreme court declined to extend ***Padilla*** to require that counsel inform a client that a plea to a sexually violent offense may lead to civil commitment under WIS. STAT. ch. 980. ***LeMere***, 368 Wis. 2d 624, ¶¶1-2, 69. The court in ***LeMere*** explained that ***Padilla*** was limited to the "unique" consequence of deportation:

> Upon reflection, we think the Court [in ***Padilla***] viewed deportation as distinct from other consequences for multiple reasons.
>
> Central to the ***Padilla*** Court's analysis was its emphasis on deportation as a "unique" consequence of conviction…. To call something "unique" is to say that it is "the only one of its kind." *Webster's Third New International Dictionary* 2500 (1986). Throughout ***Padilla***, the Court identified a number of factors that set deportation apart from other consequences.
>
> ….
>
> A unique confluence of factors thus led the ***Padilla*** Court to articulate an extraordinary exception to the direct-collateral framework—which the court otherwise declined to disturb—for the "penalty" of deportation.

LeMere, 368 Wis. 2d 624, ¶¶42-43, 48 (footnote omitted). The court in ***LeMere*** declined to extend ***Padilla***'s "unique" "new rule" to Chapter 980 civil commitments, and characterized a Chapter 980 commitment as a "classic collateral consequence." ***LeMere***, 368 Wis. 2d 624, ¶¶48, 50.

¶6 Relying on ***Padilla*** and ***LeMere***, Longley asks this court to "reconsider" the holding in ***Kosina*** that a prohibition on firearms possession is a collateral consequence of a plea that defense counsel need not discuss with the defendant. Longley asserts that this court has the authority to determine that a prior court of appeals decision (here, ***Kosina***), which would otherwise be binding, has been overruled by subsequent United States Supreme Court or Wisconsin Supreme Court precedent.

¶7 The problem for Longley is that neither ***Padilla*** nor ***LeMere*** expressly or impliedly overruled ***Kosina***. On the contrary, both the ***Padilla*** Court's reasoning and the ***LeMere*** court's reasoning provide strong indications that both courts would continue to *uphold* case law such as ***Kosina***.

¶8 I acknowledge, as Longley asserts, that the court in ***LeMere*** identified several "factors" underlying the ***Padilla*** decision, and then went on to apply those factors to support its conclusion that counsel need not inform a defendant that a plea may result in a Chapter 980 commitment. *See* ***LeMere***, 368 Wis. 2d 624, ¶¶49-69. The court in ***LeMere*** did not, however, indicate that courts are now generally free, let alone required, to apply these factors to expand counsel's duties as to all manner of collateral consequences. If anything, ***LeMere*** says the opposite. For example, the ***LeMere*** court stated: "[W]ithout a directive and clear guidance from the Supreme Court, this court would be discarding any

logical stopping point by establishing a new obligation under the Sixth Amendment to advise a defendant about a collateral consequence." ***Id.***, ¶50.

¶9 For the reasons above, I affirm.

By the Court.—Judgment and order affirmed.

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