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November 19, 2018

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You are hereby notified that the Court has entered the following opinion and order:

2017AP2066-CR State of Wisconsin v. Corey J. Uhlenberg (L.C. #2011CF80)

Before Sherman, Blanchard and Kloppenburg, JJ.

Summary disposition orders 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).

Corey J. Uhlenberg appeals a judgment of conviction and an order denying his postconviction motion for plea withdrawal. Based upon our review of the briefs and record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm.

Uhlenberg pled guilty to one count of second-degree sexual assault of a child.² His appointed counsel filed a no-merit notice of appeal and no-merit report. As part of our independent review, we directed counsel to address whether the plea-taking colloquy was arguably defective. More specifically, we pointed to the circuit court's reliance on the written plea questionnaire in ascertaining Uhlenberg's understanding of: (1) the constitutional rights waived by his guilty plea; and (2) the definition of "sexual contact," an element of second-degree sexual assault of a child. On appointed counsel's motion, we dismissed the appeal to enable Uhlenberg to file a postconviction motion in the circuit court.

Uhlenberg filed a postconviction motion for plea withdrawal alleging that the circuit court's plea-taking colloquy did not adequately establish his understanding of the constitutional rights he was giving up, or the definition of "sexual contact." After hearing the testimony of both Uhlenberg and his trial attorney, the court denied the plea withdrawal motion. Uhlenberg appeals.

A defendant seeking plea withdrawal due to a defective colloquy must demonstrate that the circuit court failed to comply with WIS. STAT. § 971.08 or other mandatory procedures, and must allege that he or she did not know or understand the information that should have been

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² Uhlenberg first pled guilty in connection with this case in 2011. He was permitted to withdraw his plea after this court reversed the circuit court's order denying his suppression motion. *State v. Uhlenberg*, 2013 WI App 59, 348 Wis. 2d 44, 831 N.W.2d 799.

provided. See *State v. Bangert*, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986). Once the defendant has made this prima facie showing, the burden shifts to the State to demonstrate by clear and convincing evidence that despite the deficiency, the defendant otherwise knew or understood the missing information. *Id.*

Given the procedural history of this case, we assume without deciding that Uhlenberg set forth a prima facie case for plea withdrawal under *Bangert*. We conclude that he is not entitled to withdraw his plea because the circuit court properly determined that despite any deficiencies in the colloquy, Uhlenberg understood both the constitutional rights waived by his plea and the definition of sexual contact. Uhlenberg's trial counsel testified that he read and explained to Uhlenberg each of the constitutional rights enumerated on the written plea questionnaire. Trial counsel testified that Uhlenberg appeared to understand and did not have any questions about those rights. Though Uhlenberg testified that he did not understand some of the enumerated constitutional rights, the circuit court considered Uhlenberg's "interest in the outcome of the proceeding, the clarity of both witnesses' recollections, motives for falsifying testimony and the reasonableness of the witnesses' testimony," and found trial counsel's testimony to be "more credible." The circuit court's findings were not clearly erroneous and support its decision rejecting Uhlenberg's claim that he is entitled to plea withdrawal because he did not understand the constitutional rights he was giving up.

The circuit court's credibility findings similarly doom Uhlenberg's claim that he is entitled to plea withdrawal because he did not know or understand the definition of "sexual contact." Trial counsel testified that he explained to Uhlenberg the offense elements, including the definition of sexual contact, and that they discussed the pattern jury instruction attached to his plea questionnaire. Uhlenberg's initials appear in several places on the attached jury

instruction, including right next to the paragraph defining “sexual contact.” Because the circuit court credited trial counsel’s testimony, the State met its burden to show that Uhlenberg understood the meaning of “sexual contact,” and that his guilty plea was knowingly, intelligently, and voluntarily entered.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction and order denying postconviction motion for plea withdrawal are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals