COURT OF APPEALS
DECISION
DATED AND FILED

January 3, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP881-CR **Cir. Ct. No. 2011CF2356**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CALEB DEVALL BROOMFIELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed*.

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Caleb Devall Broomfield appeals from a judgment of conviction on one count of substantial battery and from an order denying

without a hearing his postconviction motion for plea withdrawal.[1] Broomfield contends that he should have been allowed to withdraw his no-contest plea because of a defect in the plea colloquy. We agree with the circuit court's determination that Broomfield's motion was insufficient, and we affirm.

¶2 Broomfield pled no contest to one count of substantial battery, a class I felony. He was sentenced to the maximum penalty of one and one-half years' initial confinement and two years' extended supervision. Subsequently, he filed a postconviction motion seeking to withdraw his plea on the grounds that the circuit court during the plea colloquy had not properly reviewed with him, as one of the constitutional rights he would be waiving with a plea, the right to have the State "convince each member of the jury beyond a reasonable doubt." The circuit court denied the motion on the grounds that Broomfield had failed to allege that he did not know or understand the omitted information.

¶3 When accepting a plea, the circuit court "must address defendants personally and fulfill several duties set forth in Wis. Stat. § 971.08 and judicial mandates to ensure that a plea of guilty or no contest is constitutionally sound." ***State v. Howell***, 2007 WI 75, ¶26, 301 Wis. 2d 350, 366–367, 734 N.W.2d 48, 56–57 (footnote omitted). These duties, derived from ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), and its progeny, "are designed to ensure that a defendant's plea is knowing, intelligent, and voluntary." ***State v. Brown***, 2006 WI 100, ¶23, 293 Wis. 2d 594, 613, 716 N.W.2d 906, 915. One requirement for a voluntary plea is that a defendant must understand the nature of the constitutional

[1] The Honorable David Borowski accepted Broomfield's plea. The Honorable David A. Hansher imposed sentence and denied the postconviction motion.

rights he is waiving with his plea. *See* ***id.***, 2006 WI 100, ¶29, 293 Wis. 2d at 614, 716 N.W.2d at 916.

¶4 "When a defendant seeks to withdraw a guilty plea after sentencing, he must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" ***Id.***, 2006 WI 100, ¶18, 293 Wis. 2d at 611, 716 N.W.2d at 914 (citation omitted). "One way for a defendant to meet this burden is to show that he did not knowingly, intelligently, and voluntarily enter the plea." ***Ibid.***

¶5 A defendant who files a ***Bangert*** motion for plea withdrawal, claiming the plea was not knowing, intelligent, or voluntary because of a defect in the plea colloquy, is entitled to an evidentiary hearing on the motion when:

> (1) the defendant makes a prima facie showing that the circuit court's plea colloquy did not conform with [WIS. STAT.] § 971.08 or other procedures mandated at a plea hearing; and (2) the defendant alleges he did not know or understand the information that should have been provided at the plea hearing.

Brown, 2006 WI 100, ¶2, 293 Wis. 2d at 604, 716 N.W.2d at 911.

¶6 Whether the postconviction motion sufficiently points to a deficiency in the plea colloquy is a question of law that we review *de novo*. ***Howell***, 2007 WI 75, ¶31, 301 Wis. 2d at 369, 734 N.W.2d at 58. Whether the defendant "'has sufficiently alleged that he did not know or understand information that should have been provided at the plea hearing'" is also a question of law that we review *de novo*. ***Ibid.*** (citation omitted).

¶7 Broomfield alleged that the circuit court had failed to properly ascertain his understanding that, with his plea, he was surrendering the right to

make the State "convince each member of the jury beyond a reasonable doubt." That is, Broomfield contends the circuit court did not ascertain his understanding that he was giving up the right to jury unanimity on any guilty verdict. On appeal, the State "agrees that the plea colloquy was deficient in this regard."

¶8 However, a mere error in the plea colloquy is not a sufficient basis for relief. "A circuit court's failure to fulfill a duty at the plea hearing will [only] necessitate an evidentiary hearing if the defendant's postconviction motion alleges he did not understand an aspect of the plea because of the omission." ***Brown***, 2006 WI 100, ¶36, 293 Wis. 2d at 618, 716 N.W.2d at 917–918. The circuit court here denied Broomfield's motion because "[n]o comprehension problem has been alleged."[2] The State, too, points out this deficiency on appeal.

¶9 In his reply, Broomfield argues that the State failed to notice that paragraph 12 of his postconviction motion "clearly states that Broomfield did not knowingly enter his plea because of the defect in the plea colloquy…. Such a factual assertion should be sufficient under Bangert to allow reasonable minds to infer that Broomfield was not aware of this specific right[.]"

¶10 Paragraph 12 of the motion alleges only that "Broomfield did not enter his plea knowingly, intelligently, and voluntarily because of a defect in the plea colloquy [and] a manifest injustice would result unless the Court orders the

[2] Broomfield's appendix included a copy of his motion, but not the order denying it. *See* WIS. STAT. RULE 809.19(2) (Appellant's appendix shall contain "at a minimum, the findings or opinion of the circuit court … including oral or written rulings or decisions showing the circuit court's reasoning[.]").

withdrawal of his plea." This conclusory claim does not suffice, and Broomfield's intellectually dishonest arguments do not persuade.[3]

¶11 Broomfield alleged that his plea was not knowing, intelligent, or voluntary, but the motion on its face attributes that problem only to the colloquy defect itself—not to a corresponding failure to understand the omitted information. The lack of comprehension allegation is crucial because while a defendant who does not understand the implications of his plea should not be entering a plea, a defendant who *does* understand "should not be permitted to game the system by taking advantage of judicial mistakes." ***Brown***, 2006 WI 100, ¶37, 293 Wis. 2d at 618, 716 N.W.2d at 918. Broomfield's motion is based solely on judicial mistake and, thus, does not warrant an evidentiary hearing.[4]

By the Court.—Judgment and order affirmed.

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

[3] In addition to presenting a strained reading of his motion, Broomfield also argued that the State "proffered no evidence at that Post-Conviction hearing to rebut Broomfield's contention that the plea colloquy was defective. For this reason, the Court should allow Broomfield to withdraw his plea and remand to the Trial Court for further proceedings."

However, because Broomfield's motion was insufficient, *there was no postconviction hearing* at which the State was obligated to put on evidence. *See* ***State v. Howell***, 2007 WI 75, ¶29, 301 Wis. 2d 350, 368–369, 734 N.W.2d 48, 57 (shifting burden to State upon proper pleadings). Even if Broomfield's motion had been sufficient, the only remedy from this court would be a directive to hold an evidentiary hearing: whether plea withdrawal is warranted would be a decision for the circuit court to make following that hearing.

[4] Although in his main brief to this court, Broomfield alleged that "if he had known all of his rights … he would have changed his decision to enter a plea of no contest," we are constrained to reviewing the allegations within the four corners of his motion. *See* ***State v. Allen***, 2004 WI 106, ¶27, 274 Wis. 2d 568, 588, 682 N.W.2d 433, 443.