**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**February 21, 2013**

**Diane M. Fremgen**
**Clerk of Court of Appeals**



**Appeal Nos. 2011AP2973-CR**
**2011AP2974-CR**

**Cir. Ct. Nos. 2010CF218**
**2010CF260**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**WILLIE H. JACKSON,**

**DEFENDANT-APPELLANT.**

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APPEALS from judgments and an order of the circuit court for Portage County: JON M. COUNSELL, Judge. *Affirmed.*

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. In these consolidated cases, Willie Jackson appeals judgments convicting him of false imprisonment, battery, and bail jumping. He also appeals an order denying his postconviction motion to withdraw his pleas.

Jackson challenges the sufficiency of the plea colloquy on the discussion of the elements of all of the charges. He also challenges the factual basis to support the bail jumping charge. For the reasons discussed below, we conclude that the circuit court properly denied the plea withdrawal motion, and affirm the convictions and order.

## BACKGROUND

¶2 In Portage County Case No. 2010CF218, the State charged Jackson with second-degree recklessly endangering safety, false imprisonment, and battery, all as a repeat offender, based on a woman's allegations that, when she attempted to leave Jackson's residence during a verbal altercation, Jackson physically restrained her by pulling her hair and putting her in a choke hold. The circuit court set bail in the amount of $2,500 cash, which Jackson was unable to post. In Portage County Case No. 2010CF260, the State charged Jackson with felony bail jumping and intimidation of a witness, both as a repeat offender, based on allegations that Jackson made a phone call to the victim of the prior case in violation of a no-contact order attached as a condition of his bail.

¶3 The parties negotiated an agreement pursuant to which the State dismissed the recklessly endangering safety count from the first case and the intimidation of a witness count from the second case and agreed to cap its sentencing recommendation, in exchange for which Jackson entered pleas to the remaining charges. At the beginning of the plea hearing, Jackson presented signed plea questionnaires for both cases that included summaries of the elements of the offenses to which Jackson would be entering pleas. The court asked Jackson whether he had gone through that material with his attorney, and Jackson responded affirmatively.

¶4 Before asking Jackson for his pleas, the court also personally described the charges to Jackson as follows:

> I guess we will start with the charge in 10CF218, the false imprisonment charge …. [T]hat on or about August 3rd, 2010, in the City of Stevens Point in Portage County, Wisconsin, you did intentionally and feloniously confine or restrain another person, that being [the victim], without her consent and with knowledge that you did not have lawful authority to do so, contrary to 940.30 of the Wisconsin Statutes. That is a Class H felony. The basic penalty is six years of imprisonment and up to a $10,000 fine or both. But then it also has an enhancement based on repeater status, which can increase the term of that imprisonment by four years for a total of ten. Do you understand that?
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> ....
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> ... And the next charge in that matter, the 218 case, is battery. That on or about August 3rd, 2010, in the City of Stevens Point, Portage County, Wisconsin, you did unlawfully and intentionally cause bodily harm to another person, [the victim], without her consent and with knowledge that the person so harmed did not give consent, contrary to 940.19(1) of the Wisconsin Statutes. That is as a base penalty a Class A misdemeanor punishable by a fine not to exceed $10,000 or imprisonment not to exceed nine months or both. Then there is the enhancement ….
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> ....
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> … [The enhancement] increases the maximum term of confinement or imprisonment by a period of two years. Do you understand that?
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> ....
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> ... And in the other case, this is now the 260 case ….
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> ....
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> ... There the charge is felony bail jumping again with habitual criminality or repeater status as it is sometimes called on or about August 29th, 2010, in the Village of Plover in Portage County, Wisconsin, that you having been charged with a felony under Portage County Circuit Court file 10CF218 and having been released from

> custody pursuant to Chapter 969 of the Wisconsin Statutes, the bail statutes, that you did feloniously and intentionally fail to comply with the terms of that bond; that you had contact with [the victim of the prior case] while incarcerated, contrary to 946.49(1)(b) of the Wisconsin Statutes. The base penalty is up to six years of imprisonment and up to a $10,000 fine or both. But again, it is based on the repeater status. That is increased by four years to be a total of up to $10,000 and ten years or both. Do you understand that?

¶5 The court relied on the information in the files—which included the complaints and preliminary hearings—to provide a factual basis for the pleas. There was no discussion about whether Jackson had been released from custody at the time of the bail jumping offense.

¶6 After he had been sentenced, Jackson moved to withdraw his pleas on the grounds of a defective plea colloquy and the lack of a factual basis. The circuit court denied the motion based on oral argument and briefing by the parties, without holding an evidentiary hearing.

## STANDARD OF REVIEW

¶7 A defendant who asserts that the procedures outlined in WIS. STAT. § 971.08[1] or other mandated duties were not followed at the plea colloquy (*i.e.*, a "***Bangert*** violation"), and further alleges that he misunderstood the omitted information, may be entitled to a hearing on his plea withdrawal motion. ***State v. Hampton***, 2004 WI 107, ¶¶65-69, 274 Wis. 2d 379, 683 N.W.2d 14; ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). No hearing is required, though, when a defendant presents only conclusory allegations, or the record

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

conclusively demonstrates that the defendant is not entitled to relief. ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972).

¶8 We review the circuit court's decision to deny a plea withdrawal motion without an evidentiary hearing under the de novo standard, independently determining whether the facts alleged would establish the denial of a constitutional right sufficient to warrant the withdrawal of the plea as a matter of right. *See* ***State v. Bentley***, 201 Wis. 2d 303, 308-10, 548 N.W.2d 50 (1996); ***State v. Van Camp***, 213 Wis. 2d 131, 139-40, 569 N.W.2d 577 (1997).

DISCUSSION

¶9 Before accepting a plea, a court has an obligation to address the defendant personally and determine that "the plea is made voluntarily with understanding of the nature of the charge and the potential punishment if convicted," and to "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." WIS. STAT. § 971.08(1)(a) and (b). An understanding of the nature of the charge requires awareness of the essential elements of the crime. *See* ***State v. Nichelson***, 220 Wis. 2d 214, 218, 582 N.W.2d 460 (Ct. App. 1998).

¶10 Here, Jackson contends that the circuit court failed to determine on the record that he understood the nature of the charges against him because the court, after discussing each charge, did not explicitly ask the question, "Do you understand the elements?" We disagree. While it may have been the better practice to ask the question in the way Jackson suggests, the court plainly advised Jackson about both the nature of each charge and its potential penalties before asking Jackson if he understood the information that the court had just provided. Since the court also knew that Jackson had previously gone over the elements with

his attorney, we are satisfied that the court adequately discharged its duty in this regard.

¶11 We further note that the assertion in Jackson's postconviction motion that he failed to understand "all the essential statutory elements" of the offenses to which he entered pleas is the epitome of a conclusory allegation. A defendant is required to specifically plead in his motion that he did not know or understand "some aspect of his plea that is related to a deficiency in the plea colloquy." ***State v. Brown***, 2006 WI 100, ¶62, 293 Wis. 2d 594, 716 N.W.2d 906. While this may be self-evident in a situation where a defendant is alleging that he was provided inaccurate information, here Jackson did not allege that either counsel or the court misinformed him about anything. Thus, there is nothing in Jackson's motion that explains what his alleged misunderstanding was.

¶12 As far as the factual basis for the bail jumping plea, we will accept Jackson's assertion that he could not have been convicted at trial of bail jumping without proof that he had been released on bond. *See* ***State v. Dewitt***, 2008 WI App 134, ¶¶14, 17 & n.5, 313 Wis. 2d 794, 758 N.W.2d 201. As the State correctly points out, however, the standard for establishing a factual basis is relaxed in the context of a negotiated plea. It is sufficient to show that there was a factual basis for a more serious dismissed charge that was reasonably related to the offense for which the plea was offered. ***State v. Harrell***, 182 Wis. 2d 408, 419, 513 N.W.2d 676 (Ct. App. 1994).

¶13 Jackson argues that ***Harrell*** should apply only where a defendant is pleading to a lesser-included offense or to a charge that has been reduced in an amended information. We are persuaded, however, that the term "reasonably

related" may be properly understood to refer to charges that arose out of the same course of conduct.

¶14 Here, the State dismissed the more serious Class G felony of intimidating a witness in exchange for Jackson's plea to the Class H felony of bail jumping. The charges were reasonably related since both were based on the allegation that Jackson had made a phone call to the victim of the prior case. Jackson does not dispute that the information set forth in the complaint and adduced at the preliminary hearing provided a sufficient factual basis for the intimidation of a witness charge. Therefore, there was a sufficient factual basis to support Jackson's negotiated plea to the less serious charge, even though the facts would not have independently supported a conviction on that charge.

*By the Court.*—Judgments and order affirmed.

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