COURT OF APPEALS
DECISION
DATED AND FILED

April 16, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP1289-CR **Cir. Ct. No. 2011CF678**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PARIS MICHELLE REYNOLDS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS and RICHARD J. SANKOVITZ, Judges. *Affirmed*.

Before Curley, P.J., Fine and Brennan, JJ.

¶1 PER CURIAM. Paris Michelle Reynolds appeals from a judgment of conviction, entered upon her no-contest plea, on one count of first-degree reckless homicide by delivery of drugs. Reynolds also appeals from an order

denying her postconviction motion to withdraw her plea. Reynolds contends that she received ineffective assistance of her trial counsel and that her plea was not knowing, intelligent, and voluntary. We reject Reynolds' arguments and affirm the judgment and order.

BACKGROUND

¶2 On February 4, 2010, Doreen Malatt was found dead; her death was attributed to a combination of alcohol, oxycodone, and methadone. Police learned that Malatt was an acquaintance of Reynolds, that Reynolds had a prescription for methadone, and that Reynolds may have been the one to give Malatt the methadone the night she died. Police interviewed Reynolds outside her house, secretly recording the conversation. She admitted giving Malatt two or three pills, ostensibly for pain related to Malatt's recent dental work. Reynolds also gave a custodial statement to police, again admitting she had given Malatt the drugs. Reynolds was charged with first-degree reckless homicide.

¶3 Reynolds moved to suppress both statements to police.[1] She claimed police violated her constitutional rights when they failed to tell her that they were recording her statement outside her home. She also alleged that both statements were involuntary, though the brief in support of the motion described only the custodial statement as involuntary; Reynolds claimed involuntariness because she said she had not taken her medications for bipolar disorder, and police would not provide them to her. The circuit court denied the first part of the motion,

[1] Reynolds also moved to dismiss the case for want of prosecution, because the criminal complaint had not been filed until February 2011. The circuit court denied the motion, and Reynolds has not revisited it in postconviction or appellate posture.

regarding the recording, and that ruling is not revisited on appeal. The circuit court had to adjourn the remainder of the hearing because Reynolds' witness for her voluntariness challenge, a pharmacist, had a scheduling conflict. Before the suppression hearing could resume, though, Reynolds decided to plead no contest to the charge. The circuit court accepted the plea and sentenced Reynolds to eight years' imprisonment, consisting of three years' initial confinement and five years' extended supervision, out of a potential maximum sentence of forty years.

¶4 Reynolds filed a postconviction motion alleging ineffective assistance of trial counsel and an involuntary plea. Reynolds claimed trial counsel was ineffective for failing to tell her that even if the suppression motion were denied, she would be able to challenge the credibility of her statements to police at trial and have the jury determine whether her confessions were credible despite being under the influence of her medication.[2] She asserted that if she had known this, she would have gone to trial. Reynolds also claimed that her plea was not knowing, intelligent, and voluntary because she could not remember the plea hearing and she believed her medications likely adversely impacted her understanding at the hearing.

¶5 The circuit court ordered briefing but ultimately rejected both grounds. As for ineffective assistance, the circuit court concluded that Reynolds had failed to sufficiently allege any prejudice. Specifically, she had not offered any evidence "which might suggest to a reasonable jury that the statements she

[2] We need not address in this appeal whether, given that Reynolds claimed in her pretrial motion that her statements were involuntary because she *had not* taken her medications, Reynolds would somehow be estopped from arguing in her postconviction motion that her statements were involuntary because she *had* taken her medications.

gave while being questioned by the police were a product of her bipolar condition and her medication." As for the validity of the plea, the circuit court deemed the motion insufficient—all it alleged was that Reynolds did not remember what happened at the plea hearing. Thus, the circuit court noted, she would not be able to say now whether she understood the hearing at the time. The Record, by contrast, clearly established her understanding at the time of the plea hearing. Thus, the motion was denied.

DISCUSSION

¶6 When a defendant moves to withdraw a no-contest plea after sentencing, the motion must allege sufficient material facts which, if true, entitle the defendant to relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 309, 548 N.W.2d 50, 53 (1996). If the motion alleges sufficient facts, the circuit court must hold an evidentiary hearing. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 576, 682 N.W.2d 433, 437. If the motion does not raise sufficient facts, if the motion presents only conclusory allegations, or if the record conclusively shows that the defendant is not entitled to relief, then the decision whether to grant an evidentiary hearing is committed to the circuit court's discretion. ***Bentley***, 201 Wis. 2d at 309–310, 548 N.W.2d at 53. We review the circuit court's discretionary decisions only for an erroneous exercise of that discretion. ***Allen***, 2004 WI 106, ¶9, 274 Wis. 2d at 577, 682 N.W.2d at 437. This standard applies to Reynolds' ineffective-assistance claim as well as her involuntary-plea claim.

Ineffective Assistance of Counsel

¶7 Whether a defendant received ineffective assistance of counsel presents a mixed question of fact and law. ***State v. Thiel***, 2003 WI 111, ¶21, 264 Wis. 2d 571, 588, 665 N.W.2d 305, 314. We uphold the circuit court's factual

findings unless clearly erroneous. ***Ibid.*** Whether counsel's performance constitutes constitutionally ineffective assistance of counsel presents a question of law that this court decides *de novo*. ***Ibid.*** First, the defendant must show that counsel's performance was deficient. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Second, the defendant must show that the deficient performance prejudiced the defense. ***Ibid.*** To establish prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Strickland***, 466 U.S. at 694.

¶8 Reynolds claimed that she "was unaware that she would be able to challenge the trustworthiness and reliability of the confessions at a jury trial if she did not have a motion hearing." She asserted that she thought that if the motion to suppress was denied, "the jury would hear that the statement was credible." She alleges deficient performance because she claims counsel did not adequately explain how evidence would be presented at trial. She claims that if she had known she could have challenged her statement at trial, she would have taken the case to trial.

¶9 The motion is insufficient to require a hearing. "A defendant must do more than merely allege that he would have pled differently; such an allegation must be supported by objective factual assertions." ***Bentley***, 201 Wis. 2d at 313, 548 N.W.2d at 54. Here, Reynolds does not explain how she would have challenged the credibility of her statements—for instance, she has not alleged that she would testify on her own behalf. Of course, it is not clear that her testimony

would help her even if she did testify, as Reynolds has averred that she does not recall talking to police.[3]

¶10 Reynolds' motion further alleges no objective evidence to show that the medications she was or was not on would have adversely impacted her ability to understand police questions or her ability to decide whether to answer them. She does not explain why she believes the jury would have rejected both confessions as involuntary; indeed, the motion notes that "[i]n reviewing the audio statements, there is no proof that Ms. Reynolds was irrational, unable to understand the questions, or otherwise incapable of giving a voluntary response[.]"

¶11 Reynolds also does not adequately explain why she would have gone to trial instead of accepting the plea deal. After Reynolds had indicated during the plea colloquy that she was not certain of the differences between no-contest and guilty pleas, her trial attorney explained to the circuit court that Reynolds was accepting the plea bargain in part to avoid the civil liability that would come with a guilty verdict, and in part because she alternated between remembering and not remembering giving Malatt the methadone.

¶12 Even assuming that counsel did not adequately explain the trial process to Reynolds, her claim that she would have gone to trial is conclusory and self-serving. Further, we agree with the circuit court that Reynolds has not demonstrated a reasonable probability of a different result. The circuit court properly exercised its discretion in denying a hearing.

[3] For the same reason, it is not clear how, if Reynolds did not remember speaking with police, she would remember what counsel did or did not explain to her about trial.

Voluntariness of the Plea

¶13 A defendant may withdraw a guilty or no-contest plea only on a showing of manifest injustice. *See* ***Bentley***, 201 Wis. 2d at 311, 548 N.W.2d at 54. A plea that is not knowing, intelligent, and voluntary is a manifest injustice. ***State v. Hoppe***, 2009 WI 41, ¶60, 317 Wis. 2d 161, 193, 765 N.W.2d 794, 809–810. Again, to be entitled to a hearing on her motion, Reynolds must allege sufficient material facts which, if true, entitle her to relief. *See* ***Bentley***, 201 Wis. 2d at 309, 548 N.W.2d at 53. We are limited to reviewing the four corners of Reynolds' motion for sufficiency. *See* ***Allen***, 2004 WI 106, ¶27, 274 Wis. 2d at 588, 682 N.W.2d at 443.

¶14 Reynolds' postconviction motion, relative to her plea, alleges:

> that although the plea questionnaire form [bears] her signature, she does not remember going over the form with her counsel. She also alleges that she does not remember much of the plea hearing itself, and what she does remember is that it went "too fast" and that she did not understand what was happening. Ms. Reynolds believes that the combination of psychiatric medication at the time of the plea hearing interfered with the ability to understand the plea hearing and to voluntarily answer any questions by the court.

These allegations are insufficient and unsupported by objective evidence. They are inadequate to impugn the voluntariness of her plea when the Record quite conclusively demonstrates Reynolds is not entitled to relief on this claim.

¶15 Specifically, the circuit court had engaged Reynolds in an express colloquy during the plea hearing regarding her medication and its potential implications for her comprehension:

> THE COURT: Are you taking medication?
>
> THE DEFENDANT: Yes, sir.

> THE COURT: What type of medication?
>
> THE DEFENDANT: Psychiatric meds.
>
> THE COURT: Have those medications caused you to be confused, sleepy or disoriented today?
>
> THE DEFENDANT: No, sir.
>
> THE COURT: Are you taking them as prescribed by a doctor or pharmacist?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Do you feel as though you're alert and thinking clearly right now?
>
> THE DEFENDANT: Yes, sir.
>
> …
>
> THE COURT: And, again, is there anything about that condition as you sit here today that you feel affects your ability to understand things?
>
> THE DEFENDANT: No, sir.

¶16 Reynolds' motion alleges nothing to suggest that she did not actually understand the plea colloquy at the time she entered it, and the motion alleges absolutely nothing to contradict the express colloquy that establishes her understanding. There is also no objective factual allegation to establish why she would have been unable to voluntarily answer the circuit court's questions. The circuit court properly rejected this claim for relief.

By the Court.—Judgment and order affirmed.

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