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DISTRICT II

July 30, 2025

To:

Hon. Jason A. Rossell
Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Mark S. Rosen
Electronic Notice

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

2024AP939-CR State of Wisconsin v. Roderick L. Smith (L.C. #2021CF201)

Before Gundrum, P.J., Grogan, and Lazar, 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).

Roderick L. Smith appeals from a judgment entered after he pled guilty to first-degree intentional homicide, contrary to WIS. STAT. § 940.01(1)(a) (2023-24),[1] domestic abuse, contrary to WIS. STAT. § 968.075(1)(a), and use of a dangerous weapon, contrary to WIS. STAT. § 939.63(1)(d). He also appeals from an order denying his postconviction motion seeking 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. We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2023-24 version.

In 2021, the State charged Smith with four counts related to his girlfriend's homicide. According to the Complaint, Smith shot her with a shotgun and hid her body. Smith entered into a plea bargain with the State wherein he would plead guilty to the homicide count and the other counts would be dismissed outright. Judgment was entered in 2022. After sentencing, Smith filed a postconviction motion seeking plea withdrawal on the ground that his plea was not knowing or voluntary because the circuit court failed to advise him about the mandatory $100 domestic abuse surcharge.[2] The court denied his motion without holding an evidentiary hearing based on its conclusion that the domestic abuse surcharge was not punitive, and it therefore did not need to inform Smith about the surcharge during the plea hearing. As a result, it said, Smith was not entitled to an evidentiary hearing on his motion. Smith appeals.

To obtain an evidentiary hearing on his plea withdrawal motion, Smith must prove he alleged facts which, if true, entitled him to relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 318, 548 N.W.2d 50 (1996). If Smith so alleged, then the circuit court has no discretion and must hold an evidentiary hearing. *See* ***id.*** at 309, 318-19. If Smith "fail[ed] to allege sufficient facts," "present[ed] only conclusory allegations, or if the record conclusively demonstrates" Smith "is not entitled to relief," the court has the discretion to deny the motion without holding a hearing. *See* ***id.*** at 309-10 (quoting ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972)). Thus, as applicable here, Smith is only entitled to relief if he points to facts that, if true, constitute a manifest injustice. *See* ***Bentley***, 201 Wis. 2d at 311 ("A defendant is entitled to

[2] Smith also filed a motion to withdraw his plea prior to sentencing, which the circuit court denied. That decision is not at issue on appeal.

withdraw a guilty plea after sentencing only upon a showing of 'manifest injustice' by clear and convincing evidence.").

Here, the circuit court held that Smith's motion failed to allege facts that would entitle him to relief because the defect Smith asserted—that the failure to inform him about the $100 domestic abuse surcharge—was not actually a defect and therefore was not a manifest injustice. We agree with the circuit court's analysis and adopt it as our own.

After thoroughly analyzing all of the relevant factors in assessing whether the domestic abuse surcharge is punitive or non-punitive, the circuit court concluded: "Similar to the DNA and Child Pornography Surcharge, the [Domestic Abuse] Surcharge of $100 is non-punitive and therefore, the court was not required to inform the Defendant about the surcharge during the plea colloquy. Therefore, the Defendant has failed to establish a right to a hearing under ***Bangert***.[3]" The court further concluded that the Record conclusively demonstrates Smith knew about the surcharge when he entered his plea because it was referenced in the Complaint he admitted to having reviewed and that he agreed could be used as a factual basis for the plea. Based on the foregoing, we conclude: (1) Smith was not entitled to an evidentiary hearing on his plea withdrawal motion because he failed to allege facts that, if true, would entitle him to relief; and (2) the Record conclusively shows that the defect he asserts does not constitute a manifest injustice.[4]

[3] ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

[4] We also note that the domestic abuse $100 surcharge was not imposed in Smith's case.

(continued)

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals

Finally, it is unclear as to whether Smith is also asserting error on the basis that he was not told about the domestic abuse penalty enhancer, which may increase a sentence by three years. But any attempt to assert this argument is insufficiently developed and therefore will not be addressed. It is not our responsibility to develop arguments for a party, and we are not required to address arguments that are undeveloped or not supported by citations to the record. *See* ***Doe 1 v. Madison Metro. Sch. Dist.***, 2022 WI 65, ¶35, 403 Wis. 2d 369, 976 N.W.2d 584 (appellate courts "'do not step out of our neutral role to develop or construct arguments for parties'" (citation omitted)). We decline to address undeveloped arguments. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) ("We may decline to review issues inadequately briefed.").