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DISTRICT III

November 25, 2025

To:

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Circuit Court Judge
Electronic Notice

Katie Schalley
Clerk of Circuit Court
Dunn County Courthouse
Electronic Notice

Hector Salim Al-Homsi
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Colleen Marion
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You are hereby notified that the Court has entered the following opinion and order:

2024AP223-CR State of Wisconsin v. Mitchell D. Miner (L. C. No. 2017CF486)

Before Stark, P.J., Hruz, and Gill, 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).

Mitchell D. Miner appeals the judgment convicting him of four counts of repeated sexual assault of the same child, *see* WIS. STAT. § 948.025(1)(b) (2023-24),[1] and the order denying his motion for postconviction relief. 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.

Miner was charged with 20 counts of child sexual assault, including numerous counts of sexual assault of the same child. At Miner's bail hearing, the prosecutor stated that Miner

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

confessed to having intercourse with a minor at least 30 times, one of the victims alleged that the assaults began when she was seven years old, and "[s]exual intercourse with a juvenile under the age of 13 is a mandatory minimum of 25 years of confinement in the state prison system." Miner appeared in person at his bail hearing.

The criminal complaint stated that, for each of the repeated sexual assault of a child crimes charged, the "term of the confinement in prison portion of the bifurcated sentence shall be at least 25 years." The amended complaint included the same repeated sexual assault of a child counts as the original complaint and again stated the mandatory minimum. An information later filed by the State contained the same counts and mandatory minimum sentences as the amended complaint. Miner's attorney acknowledged that Miner received a copy of the amended complaint at the initial appearance and that Miner received the information at Miner's arraignment.

Pursuant to a plea agreement, Miner pled no contest to four counts of repeated sexual assault of the same child. Prior to the plea hearing, Miner met with his attorney and reviewed and completed a plea questionnaire and waiver of rights form. The form indicated that Miner had a high school diploma or equivalent education and understood the charges to which he was pleading no contest. It also stated that Miner was not currently receiving treatment for a mental illness or disorder. The form listed the four counts and, under each count, it stated, "Mandatory minimum terms of confinement of twenty-five (25) years, not to exceed sixty (60) years of confinement." Miner signed the form directly below a statement confirming, "I have reviewed and understand the entire document and any attachments. I have reviewed it with my attorney…. I have answered all questions truthfully and … I am asking the court to accept my plea and find me guilty."

At the start of Miner's plea hearing, the circuit court told Miner that he should let the court or his attorney know if he had any questions so they could take a recess and answer them. Miner responded that he would do so. Miner confirmed that he was 36 years old, had completed high school, and was not receiving any treatment for any mental illness or taking any medications that would impair his ability to understand the proceedings. The court asked Miner whether his attorney had gone over the information and the underlying criminal complaint with him. Miner responded, "Correct."

The circuit court then told Miner it would be going over the counts and that Miner should "listen closely." Regarding the first count, the court explained that "pursuant to statute … the Court shall impose a bifurcated sentence under [WIS. STAT. §] 973.01, term of confinement in prison … shall be at least 25 years." The court asked Miner how he wished to plead, and Miner responded, "No contest." For each of the three remaining repeated sexual assault of a child counts, the court again recited the State's allegation and again informed Miner of the mandatory minimum sentence. Each time, Miner responded that he pleaded no contest. At no time did Miner state that he did not understand the mandatory minimum or that he had a question about it.

When the circuit court asked Miner if his attorney had taken the time to answer all of the questions that he had going forward in this case, Miner responded, "Yes, sir." When the court asked him if he had received enough time to discuss the plea with his attorney prior to coming to court, Miner said, "Plenty of time, sir." When the court again asked him if he had read the criminal complaint as well as the information, Miner responded that he had. The circuit court accepted Miner's no-contest pleas and set a sentencing hearing for another date.

At the start of Miner's sentencing hearing, Miner told the circuit court that he had adequate time to discuss the sentencing hearing with his attorney and that he did not have any questions. The prosecutor then stated that each of the four counts "carry a minimum mandatory of 25 years initial confinement." Miner's attorney agreed that there was a mandatory minimum of 25 years and further acknowledged that Miner "has come to terms and understands that he's going to serve a substantial prison sentence. Twenty-five years is a long time for anybody." Miner's attorney also acknowledged that, when taking his sentence credit into account, Miner would be 59 years old when he would be released. At no time did Miner express surprise or confusion at the sentencing recommendation his attorney made on his behalf or otherwise indicate that this was not his recommendation. Rather, he told the court, "I haven't denied responsibility" and stated, regarding the sentence, "I'll accept whatever you have."

The circuit court sentenced Miner to 40 years of total imprisonment, consisting of 30 years of initial confinement followed by 10 years of extended supervision on each count. It ordered the sentences to run concurrent to one another.

Miner later filed a postconviction motion seeking to withdraw his plea, arguing that his plea was involuntary under ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d. 50 (1996), because he believed that the mandatory minimum was 15 years, not 25 years. The circuit court denied his motion without a hearing, and Miner now appeals.

On appeal, Miner challenges the circuit court's denial of his postconviction motion. A defendant is entitled to an evidentiary hearing if the postconviction motion "raises sufficient facts that, if true, show that the defendant is entitled to relief." ***State v. Balliette***, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. Whether a postconviction motion does so is a question

of law we review independently. ***State v. Ruffin***, 2022 WI 34, ¶27, 401 Wis. 2d 619, 974 N.W.2d 423.

Motions for plea withdrawl are decided under one of two standards. The first is invoked under ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986), when the plea colloquy is allegedly defective because the circuit court failed to comply with a mandatory duty. The second is invoked under ***Nelson v. State***, 54 Wis. 2d 489, 195 N.W.2d 629 (1972), and ***Bentley***, 201 Wis. 2d 303, when a defendant alleges that some factor extrinsic to the plea colloquy made the plea invalid. ***State v. Sulla***, 2016 WI 46, ¶25, 369 Wis. 2d 225, 880 N.W.2d 659.

In his postconviction motion, Miner sought to withdraw his plea under the ***Nelson/Bentley*** standard for plea withdrawal. Under this standard, "if the motion on its face alleges facts which would entitle the defendant to relief, the circuit court … must hold an evidentiary hearing," unless the record as a whole conclusively demonstrates that relief is not warranted. ***State v. Hampton***, 2004 WI 107, ¶55, 274 Wis. 2d 379, 683 N.W.2d 14 (citation modified). But defendants may not "stand on conclusory allegations, hoping to supplement them at a hearing." ***Levesque v. State***, 63 Wis. 2d 412, 421, 217 N.W.2d 317 (1974); ***State v. Allen***, 2004 WI 106, ¶¶21-23, 274 Wis. 2d 568, 682 N.W.2d 433; ***State v. Saunders***, 196 Wis. 2d 45, 52, 538 N.W.2d 546 (Ct. App. 1995) (describing conclusory allegations as subjective opinions, while historical facts are those significant or essential to the matter at hand). Rather, a motion must present allegations in a "who, what, where, when, why, and how" format with sufficient particularity for the court to meaningfully assess the claim. ***Allen***, 274 Wis. 2d 568, ¶23. The court may deny the motion without a hearing if: the motion fails to allege sufficient facts or raise a question of fact, the motion presents only conclusionary allegations, or if the record

conclusively demonstrates that the defendant is not entitled to relief. *See* ***Hampton***, 274 Wis. 2d 379, ¶52.

Miner's postconviction motion alleged that he "was aware of the 25-year number, but he believed that this was the *overall* minimum sentence." (Emphasis added.) He thought he would only be required to serve a minimum of 15 years in prison, followed by 10 years of extended supervision. Miner also alleged that "he recalls his attorney telling him that she would fight for less at sentencing, which led him to believe that he could get less than 25 years in prison." Additionally, Miner alleged that he was "taken off guard" when his attorney "argued for 25 years in prison." He further alleged that "it was not until after he was sentenced" that he realized he purportedly misunderstood the mandatory minimum and that this occurred once he "began discussing the case with other individuals."

Miner's allegations do not entitle him to a hearing, first, because they are conclusory. *See* ***Id.***, ¶52**.** They provide no explanation regarding where or from whom Miner purportedly learned that 15 years of initial confinement was the mandatory minimum or when he acquired that incorrect information. The allegations fail to explain why he believed that the mandatory minimum was 15 years of initial confinement despite the contrary statements in the complaint, amended complaint, information, plea questionnaire, and at the plea and sentencing hearings. There is no specific allegation of what Miner's attorney said aside from his claim that "she would fight for less at sentencing," which is too vague to be meaningful. Moreover, Miner fails to resolve the contradiction between his claim that he was "taken off guard" by his attorney's recommendation for the mandatory minimum and his claim that he did not realize the mandatory minimum was 25 years of initial confinement until after sentencing. He also does not state the identity of who led him to realize his misunderstanding about the mandatory minimum, when

those conversations occurred, where they occurred, or their content. Therefore, because Miner's allegations contained only subjective opinions unsupported by any alleged historical facts, *see* ***Allen***, 274 Wis. 2d 568, ¶¶21-23, they lacked the necessary specificity to entitle him to a hearing.

In addition, the record as a whole conclusively demonstrates that Miner understood that the mandatory minimum was 25 years of initial confinement for each charge. *See* ***Hampton***, 274 Wis. 2d 379, ¶52. Not only was Miner present at the bond hearing where the prosecutor stated that his crimes carried a "mandatory minimum of 25 years of confinement in the state prison system," but he also confirmed that he received and reviewed the amended complaint, information, and plea questionnaire—all of which clearly specified the 25-year mandatory period of initial confinement for each of the child sexual assault charges. At no point during the bond hearing or in any of the documents was there any mention of a 15-year minimum. Likewise, at no point during the plea hearing or sentencing hearing was there any mention of a 15-year minimum. In fact, Miner's attorney told the circuit court that Miner had "come to terms" with his sentence and understood that "he's going to serve a substantial prison sentence. Twenty-five years is a long time for anybody." Finally, even though Miner promised to notify the court during the plea hearing if he had any questions, at no point did he state he did not understand the mandatory minimum, and when given the opportunity to address the court at sentencing, Miner did not voice any confusion about his sentence exposure but instead acknowledged that he would accept whatever sentence the court would give him.

While Miner argues on appeal that use of the term "confinement" in the plea questionnaire "*could* … be interpreted as a reference to the total minimum term of imprisonment, including both prison and supervision," he does not allege that he actually did interpret the term "confinement" in this way. (Emphasis added.) Similarly, while the plea questionnaire stated

that the maximum term of confinement was "not to exceed sixty (60) years," nothing about that statement indicated that the mandatory minimum period of confinement in prison was anything other than 25 years.

Finally, while Miner argues on appeal that the term "'bifurcated sentence' is a term of art that would not necessarily be understood by a lay person," what is relevant is whether Miner understood it, and Miner never alleged in his postconviction motion that he did not. In fact, he affirmatively represented to the circuit court at the plea hearing that his attorney had answered all of his questions and that he understood the plea questionnaire and the attachments.

Therefore,

IT IS ORDERED that the judgment and order are affirmed. 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