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DISTRICT II

December 17, 2025

To:

Hon. Carey J. Reed
Circuit Court Judge
Electronic Notice

Eliot M. Held
Electronic Notice

Kayla Bembenek
Clerk of Circuit Court
Calumet County Courthouse
Electronic Notice

Paul J. Frederick #195085
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You are hereby notified that the Court has entered the following opinion and order:

2024AP1814-CR

State of Wisconsin v. Paul J. Frederick (L.C. #2022CF126)

Before Neubauer, P.J., Gundrum, 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).

Paul J. Frederick, pro se, appeals from an order denying postconviction relief entered after he pled no contest to operating a motor vehicle with a restricted controlled substance (RCS), fifth or sixth offense, contrary to WIS. STAT. § 346.63(1)(am) (2023-24).¹ Frederick contends that the circuit court erred in denying his motion to withdraw his plea because, at his consolidated plea and sentencing hearing, the court failed to formally find a factual basis for his plea before proceeding to sentencing. Based upon our review of the briefs

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

and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

In June 2022, the State filed a complaint charging Frederick with (1) operating a vehicle while intoxicated (OWI), fifth or sixth offense; (2) possession of THC, second and subsequent offense; and (3) possession of drug paraphernalia. The State later filed an amended information adding the RCS count. According to the complaint, police stopped Frederick's vehicle because it was travelling in a lane reserved for bicyclists participating in a triathlon. Frederick admitted to smoking marijuana about one half-hour before being stopped. Police found a green, leafy substance in Frederick's vehicle that later tested positive for THC. They administered field sobriety tests and later transported Frederick to a hospital for a blood draw. The complaint also summarized records from the Wisconsin Department of Transportation indicating that Frederick had five prior convictions for OWI.

Frederick ultimately agreed to plead no contest to the RCS count, with the OWI count being dismissed and the other counts dismissed and read in. Frederick and his attorney signed a Plea Questionnaire/Waiver of Rights, with the jury instructions for RCS attached. The circuit court held a plea and sentencing hearing in February 2024. At the start of the hearing, the State indicated that it had submitted a lab report showing the presence of THC in Frederick's blood so the court would "have a factual basis in addition to the complaint." The court reviewed the plea agreement with Frederick, confirming he understood its terms, the elements of the RCS charge the State would have to prove at trial, and the rights he was waiving. Frederick agreed that he had five prior convictions for OWI on his record, and that he understood the State would have to prove that beyond a reasonable doubt. The court also confirmed that Frederick understood the potential sentence terms it could impose.

The circuit court then told Frederick that if it accepted his plea, “I’m going to find you guilty of the crime to which you’re pleading based on the facts in the criminal complaint, preliminary examination or as stated here in court.” Frederick confirmed he understood, and the court then asked his counsel if it “ha[d] ... left anything out[.]” Frederick’s counsel responded, “[a] factual basis, your Honor,” and the court responded, “[w]e’re getting to that[.]” The court did not, however, return to that subject explicitly before it accepted Frederick’s plea and moved on to sentencing.

During the sentencing portion of the hearing, Frederick’s counsel told the circuit court that “the parties are generally in agreement” regarding the underlying facts. Frederick’s counsel described the police stop of Frederick’s vehicle, and acknowledged that Frederick told police “that he had smoked.” Counsel also reviewed Frederick’s prior OWI convictions as listed in the complaint. The court also reviewed the underlying facts in its remarks, touching on both Frederick’s impaired status when stopped and his OWI conviction history. The court sentenced Frederick to 18 months of initial confinement and 48 months of extended supervision.

Frederick later filed a motion for postconviction relief seeking to withdraw his plea, arguing that the circuit court failed to establish a factual basis. The court denied the motion at a hearing in August 2024. Although Frederick correctly noted that the court had not formally stated that it found a factual basis for his plea at the plea hearing, the court found “that there is a factual basis contained in the complaint” to which the parties had effectively stipulated at the plea hearing. The court noted Frederick’s counsel discussed the facts of the offense during his sentencing comments, and the facts recounted in the complaint were not disputed. The court also noted that the complaint “essentially mirror[ed]” Frederick’s counsel’s remarks at sentencing, including Frederick’s admission to the offense and his prior OWI convictions. For these reasons,

the court concluded that the lack of a formal acknowledgment that the complaint provided a sufficient factual basis for the plea was not a manifest injustice that would support withdrawal of the plea.

To withdraw a plea after sentencing is complete, a defendant must establish, by clear and convincing evidence, that withdrawal is necessary to correct a manifest injustice. *State v. Sulla*, 2016 WI 46, ¶24, 369 Wis. 2d 225, 880 N.W.2d 659. Whether a defendant has met this burden is addressed to the circuit court’s discretion. *State v. Taylor*, 2013 WI 34, ¶¶48, 56, 347 Wis. 2d 30, 829 N.W.2d 482.

A circuit court’s failure to establish a sufficient factual basis for a no contest plea is one type of manifest injustice that justifies plea withdrawal. *State v. Hudson*, 2013 WI App 120, ¶12, 351 Wis. 2d 73, 839 N.W.2d 147. A sufficient factual basis exists when information before the court indicates “that ‘a crime has been committed and it is probable that the defendant committed it.’” *State v. Scott*, 2017 WI App 40, ¶29, 376 Wis. 2d 430, 899 N.W.2d 728 (quoting *State v. Payette*, 2008 WI App 106, ¶7, 313 Wis. 2d 39, 756 N.W.2d 423). It may, for example, be set forth in the allegations of a criminal complaint. *State v. Sutton*, 2006 WI App 118, ¶17, 294 Wis. 2d 330, 718 N.W.2d 146. “[A] judge may establish the factual basis as he or she sees fit, as long as the judge guarantees that the defendant is aware of the elements of the crime, and the defendant’s conduct meets those elements.” *State v. Thomas*, 2000 WI 13, ¶22, 232 Wis. 2d 714, 605 N.W.2d 836. “In reviewing a defendant’s plea withdrawal motion on this basis a court may look to the ‘totality of the circumstances,’ including the plea and sentencing records.” *Scott*, 376 Wis. 2d 430, ¶30 (quoting *Thomas*, 232 Wis. 2d 714, ¶18).

Applying these standards here, the circuit court did not erroneously exercise its discretion in concluding that Frederick had not shown that plea withdrawal was necessary to avoid a manifest injustice. At the plea and sentencing hearing, the court ensured that Frederick was aware of the elements of the RCS charge and that his conduct met those elements. First, the Plea Questionnaire Frederick signed included the jury instructions for RCS, which listed the elements the State would need to prove at trial. The court also reviewed the elements with Frederick during the plea colloquy and confirmed that he understood them. Next, the plea and sentencing hearing transcript confirms that the complaint's allegations were not disputed and provided a sufficient basis upon which the court could conclude that Frederick had in fact committed the RCS offense. Additionally, at the start of the plea hearing, the State's counsel provided the lab report showing the presence of THC in Frederick's blood as additional factual grounds for the plea in addition to the allegations of the complaint. Finally, the complaint identified, and Frederick did not dispute, his five prior OWI convictions. Before it accepted the plea, the court told Frederick that if it did so, it would find him "guilty of the crime to which you're pleading based on the facts in the criminal complaint[.]" Frederick acknowledged that he understood.

The sentencing portion of the hearing provides additional support for the circuit court's decision to deny postconviction relief. There, Frederick's counsel and the court separately discussed the allegations in the complaint, and Frederick's counsel admitted that the parties generally agreed on the underlying facts. Although the court indicated it would "get[] to" the factual basis near the end of the plea colloquy when Frederick's counsel raised it, our review of the hearing transcript shows that the court had already identified the complaint as providing the factual basis for the plea, and that it subsequently confirmed that fact in the sentencing portion of

the hearing. The court's conclusion that Frederick had not established, by clear and convincing evidence, the absence of a factual basis for his plea was not an erroneous exercise of discretion.

Frederick argues that his motion alleged sufficient facts to entitle him to an evidentiary hearing at which he could "disprove" the lab report. (Formatting altered.) We disagree; even without the report, the allegations in the complaint, which he did not dispute, established a factual basis for Frederick's plea. Given this separate and independent source of facts to support the plea, a hearing focusing on the lab report would not have resulted in a different outcome.

Therefore,

IT IS ORDERED that the order of the circuit court is summarily affirmed. *See* 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