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DISTRICT I

December 23, 2025

To:

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Circuit Court Judge
Electronic Notice

Anna Hodges
Clerk of Circuit Court
Milwaukee County Safety Building
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Mark A. Schoenfeldt
Electronic Notice

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

2023AP1449-CR State of Wisconsin v. Eric D. Brown (L.C. # 2017CF4609)

Before Colón, P.J., Donald, and Geenen, 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).

Eric D. Brown appeals from a judgment, entered on his guilty pleas, convicting him of one count of armed robbery with the threat of force as a party to a crime and one count of fleeing or eluding an officer. He also appeals from the postconviction order denying his motion to withdraw his plea. 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 (2023-24).[1] The judgment and order are summarily affirmed.

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

Brown entered guilty pleas to the two charges in February 2019. In April 2019, the circuit court sentenced him to 20 years' imprisonment on the armed robbery and a concurrent 3.5 years' imprisonment for the fleeing. In February 2022, Brown filed a postconviction motion seeking to withdraw his pleas. He asserted that he "was denied due process of law in the entry of his plea when side effects from medication intended to treat his previously diagnosed mental health issues while in custody rendered him incapable of understanding the consequences of his plea." He further claimed that his "pleas in these cases [sic] were deficient" because:

> the court failed to ask the defendant whether he had used drugs or alcohol on the date of the hearing to such an extent that he was unable to understand the effect of his actions, and failed to inquire as to whether he was suffering, at the time of a plea, from a mental health issue, whether he was taking medication for that issue, or the effect that either that mental health issue or the medication had on the defendant's ability to understand what he was doing at the time that he entered his plea.

The circuit court denied the motion without a hearing, concluding that the court had complied with the requirements for accepting a plea and that Brown had not established a manifest injustice warranting plea withdrawal.[2] Brown appeals.

A defendant who seeks to withdraw his or her plea after sentencing must prove by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice. ***State v. Villegas***, 2018 WI App 9, ¶18, 380 Wis. 2d 246, 908 N.W.2d 198. A plea that is not entered knowingly, intelligently, and voluntarily constitutes a manifest injustice. *See* ***State v. Sulla***, 2016 WI 46, ¶24, 369 Wis. 2d 225, 880 N.W.2d 659.

[2] The Honorable David A. Hansher accepted Brown's pleas and imposed sentence. The Honorable Milton L. Childs, Sr., denied the postconviction motion. Further distinction in this opinion is unnecessary.

Two routes are available for attacking a plea. One option is to allege the plea was unknowing because of a defect in the plea colloquy. *See* ***Villegas***, 380 Wis. 2d 246, ¶20; ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). Once the defendant demonstrates that the plea colloquy was inadequate, the burden shifts to the State to prove by clear and convincing evidence that the plea was nonetheless knowing, intelligent, and voluntary. ***Bangert***, 131 Wis. 2d at 274-75. The other option for challenging the plea is to claim that it is infirm because some factor extrinsic to the plea colloquy caused the plea to be unknowing, unintelligent, or involuntary. *See* ***Villegas***, 380 Wis. 2d 246, ¶¶18-19; *see also* ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996); ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972). To succeed on this claim, the defendant must prove manifest injustice by clear and convincing evidence. *See* ***State v. Brown***, 2006 WI 100, ¶42, 293 Wis. 2d 594, 716 N.W.2d 906. It is not clear which approach Brown is utilizing, but he is not entitled to relief under either approach.

A defendant may invoke ***Bangert*** only by alleging that the circuit court failed to fulfill its plea colloquy duties. ***State v. Howell***, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48. Such a motion warrants an evidentiary hearing if: (1) it makes a *prima facie* showing that the plea was accepted without conformity to WIS. STAT. § 971.08 or other mandatory procedures and (2) "the motion alleges that in fact the defendant did not know or understand the information that should have been provided at the plea colloquy." ***Howell***, 301 Wis. 2d 350, ¶27.

Brown alleges the plea colloquy was defective because the circuit court did not: ask him whether he had used drugs on the date of the hearing that made him unable to understand the effect of his actions; inquire whether he was suffering from a mental health issue; inquire whether he was taking medication for any mental health issue; or ask what effect that mental health issue or medication had on his ability to understand what he was doing at the time of the

plea. However, Brown identifies no source to support his implication that these questions are mandatory parts of a plea colloquy.

Before accepting a guilty plea, the circuit court shall, among other things, "[a]ddress 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." ***State v. Pegeese***, 2019 WI 60, ¶22, 387 Wis. 2d 119, 928 N.W.2d 590 (alteration in original; citation omitted). Thus, one of the circuit court's duties when accepting a plea is to "[d]etermine the extent of the defendant's education and general comprehension so as to assess the defendant's capacity to understand the issues at the hearing." ***Id.***, ¶23 (citation omitted). There are no specific questions the circuit court must ask to make this determination.

Here, the circuit court specifically confirmed with Brown that he understood the terms of the plea agreement presented to the court; that he signed a guilty plea questionnaire and waiver of rights form after having reviewed it with counsel; that he understood the elements of the crimes to which he was pleading guilty; and that Brown was thirty-two years old and had twelve years of schooling. Additionally, the plea questionnaire, signed and so acknowledged by Brown, indicates on its face that Brown was not receiving treatment for a mental illness at the time of the plea, nor had he had any alcohol, medications, or drugs within the preceding 24 hours. There would have been no reason for the circuit court to inquire further about any mental health diagnosis or prescribed medications in light of those written representations. *See* ***State v. Hoppe***,

2008 WI App 89, ¶18, 312 Wis. 2d 765, 754 N.W.2d 203. Because we discern no error in the plea colloquy, Brown's ***Bangert*** challenge to his pleas fails.[3]

Brown also alleges that he had been diagnosed with schizophrenia, for which he had been prescribed medication, and that the side effects of the medication "adversely affected [his] ability to voluntarily enter his plea." He says the medication:

> was making him dizzy and causing him to be confused. On several occasions, jail staff had to remind the defendant of what cell he was in. The defendant could not hang out in the dayroom because he could not keep up with or stay focused on a conversation with anyone. In addition, the medication caused him to have severe headaches, as a result of which the defendant could do nothing in response except to lay down and sleep. The defendant further states that he often barely knew what day it was or what the time was.
>
> As a result of the side effects caused by the medication prescribe[d] for the defendant, he had, after the plea hearing and continuing to the date of his affidavit, no clear recollection of the plea proceedings. The defendant states that he vaguely remembers the judge asking him questions. However, the defendant cannot recall what the questions were or what they pertained to.

Side effects of medication and mental illness are extrinsic factors, which fall under the ***Nelson***/***Bentley*** framework. To be entitled to an evidentiary hearing under ***Nelson***/***Bentley***, a defendant must allege sufficient, nonconclusory facts that, if true, would entitle the defendant to relief. *See* ***Howell***, 301 Wis. 2d 350, ¶¶75-76. If the defendant fails to allege sufficient facts in the motion to raise a question of fact or presents only conclusionary allegations, the circuit court

[3] Brown's motion also fails to satisfy the second pleading requirement of ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986), because he did not allege with any specificity what information he "did not know or understand … that should have been provided at the plea colloquy." ***State v. Howell***, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48. He alleges only that he was "incapable of understanding the consequences of his pleas."

may in its discretion deny the motion without a hearing. ***Id.***, ¶75. Brown's allegations are insufficient to establish a manifest injustice by clear and convincing evidence.

First, the allegations of impairment are conclusory; they are made in general terms, describing what happened "often" or "[o]n several occasions," without specifically alleging Brown was impaired during his conversations with counsel or at the time of the plea hearing. Second, the fact that Brown could not recall what the judge asked him during the colloquy at the time he was preparing his postconviction motion three years later does not mean that Brown was lacking sufficient understanding at the time of the plea. Finally, Brown does not explain why, if he had a diagnosis of schizophrenia and was taking medication that impacted his comprehension, he answered to the contrary on his plea questionnaire. Accordingly, we are unpersuaded that Brown has shown a manifest injustice resulting from the entry of his plea.

Therefore,

IT IS ORDERED that the judgment and order are 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