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DISTRICT II

April 1, 2026

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

2025AP398 State of Wisconsin v. Sammy L. Cole (L.C. #2001CF106)

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).

Sammy L. Cole appeals pro se from an order denying his WIS. STAT. § 974.06 (2023-24)[1] motion for postconviction relief arguing that his plea colloquy and counsel were defective. 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. For the following reasons, we affirm the circuit court's order denying Cole's postconviction motion to withdraw his plea.

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

BACKGROUND

In 2001, Cole held at gunpoint a woman withdrawing money at an ATM and demanded she give him $300. After the woman was unable to withdraw the amount from the ATM, Cole took $80 from the woman's wallet and fled the scene. Cole later was interviewed by police and admitted to robbing the woman at gunpoint. The State charged Cole with armed robbery with threat of force as a repeater and with possession of a firearm by a felon as a repeater. Cole pled no contest to armed robbery as a repeater. The dismissed count of possession of a firearm by a felon as a repeater was to be "read-in" for sentencing purposes. On the plea questionnaire/waiver of rights form, Cole checked every box confirming his understanding that he was giving up each enumerated right by signing the plea agreement. At his plea hearing, the circuit court held a lengthy colloquy with Cole to confirm that he wished to plead no contest, that he understood the rights he was waiving, and that he understood the proceedings. Accordingly, the court found that "the plea of 'no contest' ha[d] been entered freely, voluntarily, knowingly, and intelligently" by Cole. Cole was sentenced to a 45-year sentence that consisted of 35 years of initial confinement and 10 years of extended supervision.

In 2024, Cole pro se filed a motion seeking WIS. STAT. § 974.06 postconviction relief to withdraw his plea, arguing that his plea colloquy was "constitutionally deficient" and was not entered into voluntarily, knowingly, or intelligently, and that he received ineffective assistance of counsel. The circuit court denied Cole's motion, finding that it was procedurally barred. On appeal, we concluded that the motion was not procedurally barred, and thus reversed and remanded. On remand, the circuit court denied Cole's postconviction relief for an evidentiary hearing, finding that there was "no manifest injustice, much less any question as to the integrity of [Cole's] plea." Cole appeals. He argues that he was entitled to an evidentiary hearing on

whether his plea colloquy was defective because the court failed to inform him of certain rights, whether the court failed to inform him it was not bound by any sentencing recommendation, and whether he received ineffective assistance of counsel.

DISCUSSION

We review a motion of postconviction relief under a mixed standard of review where we examine de novo whether the motion, as a question of law, "alleges sufficient material facts that, if true, would entitle the defendant to relief" and examine the circuit court's "discretionary decisions under the deferential erroneous exercise of discretion standard." ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. "An exercise of a discretion is erroneous if it is based on an error of fact or law." ***State v. Ruffin***, 2022 WI 34, ¶28, 401 Wis. 2d 619, 974 N.W.2d 432.

Circuit courts must ensure pleas of guilt or no contest are entered voluntarily "with understanding of the nature of the charge and the potential punishment if convicted." WIS. STAT. § 971.08(1)(a). During a plea colloquy, the court satisfies this requirement by personally addressing the defendant and examining his ability to comprehend issues at the plea hearing; determining whether promises, agreements and/or threats were made to the defendant in connection with his plea; informing the defendant that an attorney may discover defenses or mitigating circumstances not known to a layman, and that if he is indigent, an attorney will be provided to him; and informing the defendant of the constitutional rights he is waiving. ***State v. Brown***, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906.

A defendant moving for plea withdrawal must show "by clear and convincing evidence" that not granting plea withdrawal would result in a "manifest injustice." ***State v. Thomas***, 2000

WI 13, ¶16, 232 Wis. 2d 714, 605 N.W.2d 836 (citation omitted). "The 'manifest injustice' test requires a defendant to show 'a serious flaw in the fundamental integrity of the plea.'" ***Id.*** (citation omitted). In essence, a defendant must make a prima facie showing that, when the circuit court accepted his plea, it did not satisfy its burden under WIS. STAT. § 971.08. ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). If a defendant shows a prima facie case, "the burden … shift[s] to the state to show by clear and convincing evidence that the defendant's plea was [made] knowingly, voluntarily, and intelligently[.]" ***Id.*** A defendant must also make a prima facie showing to even have a court consider "the necessity of an evidentiary hearing." ***State v. Ruffin***, 401 Wis. 2d 619, ¶22. Courts thus have discretion to hold or to not hold an evidentiary hearing so long as "the record conclusively demonstrates that the defendant is not entitled to relief[.]" ***Id.***, ¶28.

Here, Cole does not present prima facie evidence that entitles him to an evidentiary hearing. Rather, the Record shows Cole understood his plea, and signed the plea waiver knowing he was waiving certain rights:

> THE COURT: … Is it correct, Mr. Cole, that you wish to plead "no contest" to the charge of armed robbery as a repeater?
>
> THE DEFENDANT: Yes, sir.
>
> ....
>
> THE COURT: All Right. Do you understand that by entering a plea of "no contest", Mr. Cole, that you are giving up your right to a trial, including a jury trial, and that you are giving up your right to remain silent?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Have you completed the written plea questionnaire and waiver of rights form, sir?
>
> THE DEFENDANT: Yes, I have.

> THE COURT: And is this your signature on the document?
>
> THE DEFENDANT: Yes, sir.
>
> ….
>
> THE COURT: … [T]his document indicates that you understand the charge to which you are entering a plea of "no contest." Is that also correct?
>
> THE DEFENDANT: Yes, sir.

The circuit court went on to ask Cole whether he understood the rights he was waiving: testifying on his own behalf, calling witnesses to testify, and demanding a twelve-member jury. The court ascertained his understanding that the State would need to prove its case beyond a reasonable doubt. Cole also confirmed that he had discussed and understood everything that his attorney had told him about his case:

> THE COURT: … Mr. Cole, are you satisfied that you are able to understand the things that your attorney has had to say to you about your case?
>
> THE DEFENDANT: Yes, sir.
>
> THE COURT: Okay. Is there any reason why you believe that you are not able to effectively explain your questions that you have to your own lawyer?
>
> THE DEFENDANT: No, sir.

Cole reaffirmed that he had no questions about the rights that he was waiving by entering his plea and that no one coerced him into doing so:

> THE COURT: Is there anything that has occurred in your case so far, or anything about the rights that you are giving up by entering a plea of "no contest" here, that you don't understand, and that you would like me to explain for you?
>
> THE DEFENDANT: No, sir.

> THE COURT: Do you understand that if you wanted to have a trial … that you would have the right to testify in your own behalf, and also to present evidence at your trial, and also to have the [c]ourt order witnesses to come to court to testify for you, even if they did not want to come? Do you understand that?
>
> THE DEFENDANT: Yes, sir.

The circuit court also informed Cole that the maximum term of confinement he faced was up to 70 years, and explained the read-in procedure to him:

> THE COURT: … Do you understand that if a charge is read in, as part of a plea agreement, it has the effect of allowing the [c]ourt to consider that charge when it sentences you, but that you cannot be further prosecuted for that offense? Do you understand that?
>
> THE DEFENDANT: Yes, sir.

Lastly, the court confirmed with Cole's defense counsel, Mr. Loy, that his client entered into his plea voluntarily and understood it:

> THE COURT: … Mr. Loy, are you satisfied that your client has freely, voluntarily, knowingly, and intelligently waived his rights and entered his plea?
>
> MR. LOY: Yes, your Honor. I would note that Mr. Cole and I have reviewed the plea questionnaire in detail, and I believe that he understood everything in that questionnaire.
>
> THE COURT: Okay. Have you observed or noticed any problem communicating with Mr. Cole, or his ability to understand these proceedings ...?
>
> MR. LOY: No, your Honor.
>
> THE COURT: Okay. The [c]ourt will find that the plea of "no contest" has been entered freely, voluntarily, knowingly, and intelligently. The plea is entered into the record.

Both of Cole's arguments regarding failures by the circuit court in his plea colloquy fail. First, he asserts that the court failed to inform him that by pleading no contest he would give up

the right to confront his accusers. He next contends that the court failed to state, on the record, that it was not bound by the sentencing recommendations in the plea agreement.

The circuit court explained that Cole admitted he had reviewed the plea questionnaire with his attorney "in detail," and that the attorney testified that Cole "understood everything in it." Cole was told he would be giving up his right to have a trial and to have the court order witnesses to testify on his behalf even if they did not want to do so. Cole also admitted that there was nothing about the rights he was giving up by entering a plea that he did not understand,[2] and there was nothing that he wanted the court to explain further to him in that regard. Moreover, the right to confrontation was clearly detailed in the plea questionnaire that Cole's attorney had stated he read and understood. It is clear that the court did not erroneously exercise its discretion when it denied Cole's plea withdrawal on this ground.

Next, Cole argues the circuit court did not "on the record explain that the court was not bound by any sentencing agreements, read[-]ins or recommendations from the parties and can impose its o[w]n sentence." This contention, like the first, is belied by the court's findings that Cole reviewed the plea questionnaire with counsel and understood its terms. In addition, the court—on the record—advised Cole of the maximum sentence and explained the read-in procedure, which allows a court to consider read-in charges when determining the appropriate sentence. Cole acknowledged his understanding of the process.

[2] Cole also argues now that he was "suffering from withdrawals, depression and anxiety," but at the plea hearing, he agreed he was "able to understand the things" his attorney told him about the case. We, accordingly, give no credence to this new argument.

While we agree the circuit court did not explain it was not bound by any sentencing recommendation in the plea agreement, it need not have done so because there *was* no sentencing agreement. There was *no* joint recommendation or agreement on what sentencing Cole's attorney and the prosecutor would be seeking. Without a recommendation, there was no error by the court for failing to state it was not bound by a recommendation that did not exist. That would have been unnecessary. Taken together with the language in the plea questionnaire, which says the court is not bound by any sentencing recommendation, the court appropriately denied Cole's motion on this ground as well.

We conclude that the circuit court properly confirmed that Cole's plea had been voluntarily and legally entered as required by WIS. STAT. § 971.08(1), and that the Record shows that the court did not err by failing to fully inform Cole of his rights or that the court was not bound by a recommendation that was not included in the plea. Consequentially, Cole did not make a prima facie showing of wrongdoing by the court when accepting his plea. Cole faced no manifest injustice. Accordingly, the court was within its discretion to not hold an evidentiary hearing as there was no "error of fact or law." ***Ruffin***, 401 Wis. 2d 619, ¶28.

Contrasting ***State v. Hoppe*** further supports our conclusion. *See* 2009 WI 41, 317 Wis. 2d 161, 765 N.W.2d 794. At the plea colloquy, the circuit court only asked the defendant whether he understood the plea questionnaire form, whether he was entering into his pleas freely, knowingly, and voluntarily, and whether his counsel was satisfied. ***Id.***, ¶¶25-27. Our supreme court held that this did not meet the plea colloquy requirements mandated under WIS. STAT. § 971.08(1) as circuit courts are meant to "ensure that the defendant's guilty plea comports with the constitutional requirements for a knowing, intelligent, and voluntary plea" and not "rely entirely" on a plea questionnaire form. ***Hoppe***, 317 Wis. 2d 161, ¶31. In other words, the court

must have a substantive colloquy with the defendant that includes a "personal exchange" to ensure that he understands "by entering his no contest plea [that] he was waiving his applicable constitutional rights." ***Id.***, ¶37 (quoting ***State v. Hansen***, 168 Wis. 2d 749, 755-56, 485 N.W.2d 74 (Ct. App. 1992)). Accordingly, the ***Hoppe*** court found that that was a defective plea colloquy and that defendant had in fact presented prima facie evidence for an evidentiary hearing. ***Hoppe***, 317 Wis. 2d 161, ¶¶33-34, 43.

Unlike in ***Hoppe***, the circuit court here properly conducted Cole's plea colloquy pursuant to WIS. STAT. § 971.08(1). At Cole's plea hearing, the plea colloquy was supplemented through the court's further questioning where it confirmed that Cole understood that in entering his plea of "no contest," and he was giving up his constitutional rights. The court confirmed Cole's understanding that he had understood the component parts of the plea questionnaire/waiver of rights form that he signed, and that both Cole and his counsel believed that Cole freely, knowingly, voluntarily, and intelligently waived his rights by entering his plea. In other words, the colloquy was thorough, as required by ***Hoppe***.

Cole also made a claim of ineffective assistance of counsel in his postconviction motion that the circuit court did not address in its order, and that he reasserts in his appeal. To succeed on an ineffective assistance of counsel claim, Cole must show that his counsel's performance was "deficient and that the deficient performance was prejudicial." ***Allen***, 274 Wis. 2d 568, ¶26. It is simply not enough to "merely allege that [the defendant] would have pled differently; such an allegation must be supported by objective factual assertions." ***State v. Bentley***, 201 Wis. 2d 303, 313, 548 N.W.2d 50 (1996). Cole claims his counsel performed deficiently when he did not inform him that he would be waiving his right to confront his accuser, and that "the court was not bound by any sentencing agreements[.]" Cole also asserts that he "would not have pleaded

guilty and would have insisted on going to trial" but for his counsel's error. His claim fails under the facts recounted in resolving Cole's claim of receiving a defective plea colloquy, as they show that his counsel informed him of the rights he was waiving by entering a plea. The facts show that Cole's counsel informed the circuit court that he and Cole went over the plea questionnaire and that he believed Cole understood the rights he was giving up. These are not errors by counsel "so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." ***Allen***, 274 Wis. 2d 568, ¶26 (citation omitted). Because Cole fails to sufficiently allege deficient performance by his counsel, we conclude that his ineffective assistance of counsel claim fails.

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