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DISTRICT I

July 12, 2022

To:

Hon. Janet C. Protasiewicz
Circuit Court Judge
Electronic Notice

Hon. Jonathan D. Watts
Circuit Court Judge
Electronic Notice

George Christenson
Clerk of Circuit Court
Milwaukee County
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Assistant Attorney General
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Christopher D. Sobic
Assistant State Public Defender
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You are hereby notified that the Court has entered the following opinion and order:

2020AP1153-CR State of Wisconsin v. Martez Trevell Baker (L.C. # 2017CF3152)
2020AP1154-CR State of Wisconsin v. Martez Trevell Baker (L.C. # 2017CF3560)

Before Brash, C.J., Donald, P.J., and White, J.

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).

Martez Trevell Baker appeals judgments convicting him of five drug-related offenses; one count of second-degree recklessly endangering safety, and one count of fleeing. He also appeals the order denying his motion for postconviction relief.[1] The only issue on appeal is whether Baker demonstrated by clear and convincing evidence that his guilty pleas were not

[1] These appeals were consolidated on Baker's motion. The Honorable Janet Protasiewicz presided over the plea and sentencing hearings in these matters and entered the judgments of conviction. The Honorable J.D. Watts issued the order denying Baker's postconviction motion.

knowing, intelligent, and voluntary because he entered them under duress. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2019-20).[2] We summarily affirm.

In Milwaukee County Case No. 2017CF3152, the State charged Baker with three counts of delivery of heroin; one count of possession with intent to deliver heroin; and one count of possession with intent to deliver cocaine. The complaint alleged that Baker sold heroin to an undercover police officer on three occasions in 2017. Police then arranged a final undercover drug purchase from Baker. During that transaction, police stopped Baker and found heroin and cocaine during a search of his car.

While he was out on bail, Baker was involved in a second incident, which resulted in the charges in Milwaukee County Case No. 2017CF3560. In that case, the police pursued Baker after learning from a confidential source that he was involved in drug dealing. They attempted to stop him while he was in his vehicle and he fled. The State subsequently charged Baker with second-degree recklessly endangering safety; disarming a peace officer; fleeing an officer; and felony bail jumping.

Baker pled guilty to all of the charges in Case No. 2017CF3152 and to second-degree recklessly endangering safety and fleeing in Case No. 2017CF3560. As part of the plea agreement, the two remaining counts in Case No. 2017CF3560 were dismissed and read-in and the parties agreed to make a global joint sentencing recommendation for ten years initial confinement and five years extended supervision.

[2] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

During the plea colloquy, the circuit court asked Baker whether "anybody threaten[ed]" him or "pressure[d]" him to plead guilty, and Baker responded, "No, ma'am." Baker also told the circuit court he was satisfied with trial counsel's representation, and trial counsel told the court that he was satisfied that all of Baker's pleas were being made freely and voluntarily.

Baker agreed to the complaints as setting forth a factual basis for the charges and his pleas, telling the circuit court that in June 2017, he knowingly delivered heroin three times, he engaged in the same behavior a fourth time with a larger amount of heroin as well as cocaine, and in August 2017, he drove recklessly and fled from police. The circuit court concluded that Baker was entering his pleas freely, voluntarily, and intelligently, accepted the pleas, and found him guilty of all seven counts. At sentencing, the circuit court followed the joint recommendation and sentenced Baker to a total sentence of ten years initial confinement and five years extended supervision.

Postconviction, Baker sought to withdraw his pleas to all seven charges. He claimed that his pleas were involuntary and entered under duress because his trial counsel told him he would withdraw if Baker did not plead guilty. At the evidentiary hearing that followed, the circuit court heard testimony from Baker's trial counsel, Baker, and Baker's mother.

The circuit court denied Baker's motion, concluding that his trial counsel's testimony that he would not have threatened to withdraw was credible and that Baker and his mother's testimony was incredible, particularly given that Baker never alerted the circuit court to any threats from trial counsel. This appeal follows.

A defendant who seeks to withdraw a plea after sentencing must establish that withdrawal is necessary to avoid a manifest injustice. ***State v. Taylor***, 2013 WI 34, ¶24, 347

Wis. 2d 30, 829 N.W.2d 482. One way to show a manifest injustice is to demonstrate that a plea was not knowing, voluntary, and intelligent. ***Id.***

When reviewing a decision on a motion to withdraw a plea, this court accepts the circuit court's findings of evidentiary or historical fact unless they are clearly erroneous. ***State v. Brown***, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906. However, whether a plea was knowing, voluntary, and intelligent is a question of constitutional fact that this court reviews independently. ***Id.***

On appeal, Baker argues that the circuit court erred when it denied his motion to withdraw his pleas. He renews his argument that his guilty pleas were not voluntary. Baker contends that he entered his guilty pleas under duress because he believed that if he did not plead guilty, trial counsel would withdraw, resulting in a significant delay in his cases and perhaps leaving him without counsel.

As support, Baker relies on ***State v. Basley***, 2006 WI App 253, 298 Wis. 2d 232, 726 N.W.2d 671. The ***Basley*** court concluded that a proper plea colloquy cannot be used to deny a defendant a hearing on a plea withdrawal motion when the defendant adequately alleges something outside the colloquy caused the plea to be invalid. ***Id.***, ¶18. In that case, the defendant adequately alleged his plea was invalid when he asserted counsel had coerced him into pleading no-contest by threatening to withdraw unless he pled, and yet, the defendant was not afforded an evidentiary hearing. ***Id.***, ¶¶3, 6, 10. The ***Basley*** court ruled that the circuit court erred when it denied the defendant an evidentiary hearing on his motion but "note[d] in closing that our disposition of Basley's present appeal should not be interpreted as an indication that we believe Basley will necessarily prevail in his request to withdraw his no contest plea." ***Id.***, ¶19.

Basley is inapposite given that, here, the circuit court did hold an evidentiary hearing. Based on the testimony presented at the evidentiary hearing in this case, the circuit court made credibility determinations and concluded that both Baker's self-serving testimony and his mother's corroboration of that testimony were "less credible and less persuasive" than that of trial counsel. The circuit court specifically highlighted trial counsel's testimony that he would not have threatened to withdraw if Baker insisted on going to trial.[3] The circuit court additionally found that Baker expressly told the court during the plea colloquy that he had not been threatened into entering his pleas and that neither Baker nor his mother raised the issue of coercion during the plea proceedings or at sentencing. As a result, the circuit court found that Baker's "delayed assertion of coercion along with the patent self-interest in reopening his criminal case hurt his credibility."

Baker has not shown that these findings were clearly erroneous. Consequently, we conclude the circuit court properly denied Baker's motion.

[3] During the evidentiary hearing, trial counsel volunteered that his recollections of the specifics of his interactions with Baker may have been affected both by the passage of time and by immunotherapy drugs that he took to treat cancer. In its written decision, the circuit court found that trial counsel's "testimony was not devalued simply because of a lack of specific recollection" and took into account trial counsel's testimony as to his habits and practices when it came to withdrawing from a case.

Therefore,

IT IS ORDERED that the judgments and order are summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals