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DISTRICT I

April 25, 2023

To:

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Circuit Court Judge
Electronic Notice

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

Nicholas DeSantis
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Christopher D. Sobic
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You are hereby notified that the Court has entered the following opinion and order:

2021AP2063-CR State of Wisconsin v. Lamarr Deprice Blunt (L.C. # 2016CF3245)

Before Brash, C.J., Donald, P.J., and Dugan, 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).

Lamarr Deprice Blunt appeals his judgment of conviction, entered after he pled guilty to numerous felonies, as well as appealing an order of the trial court denying his postconviction motion to withdraw his guilty pleas. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. § 809.21(1) (2021-22).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

In July 2016, Blunt was charged with twenty-two offenses, including multiple counts of operating a motor vehicle without the owner's consent, possession of cocaine, possession with intent to deliver heroin, and possession of a firearm by a felon. He was also charged with fleeing law enforcement officers, obstructing an officer, keeping a drug house, and bail-jumping. Blunt entered into a plea agreement in April 2017 where he pled guilty to fifteen of the counts against him, with six other counts to be dismissed but read in at sentencing.[2]

Approximately a month after the plea hearing, Blunt filed a motion to withdraw his pleas prior to sentencing, claiming ineffective assistance of his trial counsel, Attorney Richard Poulson. At a hearing on the motion in May 2017, Blunt explained that Attorney Poulson had not shown him some discovery materials, and that communication had been lacking. He stated that he had filed a complaint with the Office of Lawyer Regulation against Attorney Poulson.

The trial court confirmed with Attorney Poulson that he had been prepared for trial on the date that the pleas were entered, which was the date the matter had been set for trial. The court noted that this was likely a "delay tactic" by Blunt based on the "incredibly strong" case against him. Nevertheless, the court permitted Attorney Poulson to withdraw and new counsel to be appointed, with Blunt to determine whether he wanted to continue to pursue plea withdrawal.

Blunt, by his new counsel, filed a new motion to withdraw his pleas in February 2018, arguing that he felt pressured to enter the pleas because he did not believe that Attorney Poulson was prepared for trial. He further asserted that because Attorney Poulson had not reviewed all of the discovery materials with him, he was therefore unable to make an informed decision about

[2] One of the cocaine possession charges was eliminated from the amended information.

going to trial. However, the trial court found that Blunt had not presented any argument that rose to the level of requiring plea withdrawal in the interest of fairness, and denied Blunt's motion without a hearing. The trial court imposed a global sentence of twenty years of initial confinement to be followed by fifteen years of extended supervision.

Blunt subsequently filed a postconviction motion seeking plea withdrawal. He argued that there were fair and just reasons to withdraw his pleas prior to sentencing, and that he received ineffective assistance of counsel from Attorney Poulson. Specifically, he asserted that Attorney Poulson had pressured him to plead guilty and had failed to review discovery with him. He also claimed that Attorney Poulson had promised that he would receive no more than eight to ten years of initial confinement if he accepted the plea offer, and that his girlfriend, who was also charged in this case and with whom he had a child, would not go to prison.

A ***Machner***[3] hearing was held over several days in June and July 2021—more than four years after Blunt had entered his guilty pleas. Attorney Poulson, who was retired by then, testified. He recalled representing Blunt, but his memory of the case was quite limited; he explained that he had turned over his file to the Public Defender's office, and did not have a copy of the file to review prior to testifying.

Attorney Poulson believed that a plea hearing was scheduled—as opposed to being scheduled for trial—on the date that Blunt entered his pleas. Attorney Poulson stated that his recollection was that he and Blunt had been discussing the plea negotiations prior to the trial

[3] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

date. As a result, Attorney Poulson testified that he was not ready for trial because he believed that Blunt was going to enter a plea.

On cross-examination, however, Attorney Poulson testified that during his forty-three years of practice, if a case had been set for trial, he would have been prepared, or he would have previously requested an adjournment. Attorney Poulson further stated that he "never" promised clients a specific sentence length, and denied telling Blunt that his plea would affect the disposition of his girlfriend's case.

Blunt also testified at the ***Machner*** hearing. He stated that he had always planned on going to trial, and that he had never discussed entering guilty pleas with Attorney Poulson until the day the trial was to start. He further testified that Attorney Poulson promised him that he would not serve more than ten years in prison and that his girlfriend would not go to prison at all, and that was the only reason he entered the pleas. Blunt also claimed that he was not guilty of all of the charges against him, but that Attorney Poulson coerced him into entering guilty pleas to all of them.

In an oral ruling, the trial court discussed Attorney Poulson's testimony at the ***Machner*** hearing. The court noted that it had known Attorney Poulson for "several decades" and that he was always an "extremely well-prepared attorney." The court observed that it had never seen Attorney Poulson testify "in that manner," and expressed concern that perhaps "something more was going on with [him]," given his lack of recall about the case. Ultimately, the court found that, based on Attorney Poulson's statement at the plea withdrawal motion hearing in May 2017, he was prepared to go to trial, regardless of his testimony at the ***Machner*** hearing.

Additionally, the trial court found Blunt's testimony at the ***Machner*** hearing to be "not credible at all." Therefore, the court found that Attorney Poulson was not ineffective, that Blunt's pleas were knowingly, voluntarily, and intelligently entered, and that it had not erred in refusing to allow Blunt to withdraw his pleas. Blunt appeals.

The trial court's decision to deny a motion for plea withdrawal is discretionary, and this court will affirm that decision "as long as it was demonstrably 'made and based upon the facts appearing in the record and in reliance on the appropriate and applicable law.'" ***State v. Jenkins***, 2007 WI 96, ¶6, 303 Wis. 2d 157, 736 N.W.2d 24 (citations and some quotation marks omitted). Generally, the trial court should allow a defendant to withdraw his or her plea prior to sentencing "for any fair and just reason," unless the State would be substantially prejudiced. ***State v. Lopez***, 2014 WI 11, ¶61, 353 Wis. 2d 1, 843 N.W.2d 390 (citations omitted).

Plea withdrawal is not, however, an "absolute right." ***Id.*** (citations omitted). Rather, the defendant bears the burden of demonstrating a fair and just reason for plea withdrawal by a preponderance of the evidence. ***Id.*** For example, coercion by trial counsel or a "[g]enuine misunderstanding of a guilty plea's consequences" have been deemed to be fair and just reasons. ***State v. Cooper***, 2019 WI 73, ¶16, 387 Wis. 2d 439, 929 N.W.2d 192 (citation omitted). However, the reason proffered by the defendant must be one that the trial court finds credible. ***Jenkins***, 303 Wis. 2d 157, ¶43.

Here, the trial court found Blunt's proffered reasons for plea withdrawal to be incredible. It further found that Attorney Poulson was prepared for trial based on his statement at the plea withdrawal motion hearing in May 2017, his testimony at the ***Machner*** hearing regarding his general practices, and the court's personal knowledge of Attorney Poulson's skills. Our standard

of review dictates that we accept the trial court's factual and credibility determinations unless they are clearly erroneous. ***Jenkins***, 303 Wis. 2d 157, ¶33. In reviewing those determinations, this court looks to whether the trial court examined the relevant facts and whether its findings are supported by the record. ***Id.***

We conclude that the record supports the trial court's findings and, as such, they are not clearly erroneous. Therefore, the trial court did not err in denying Blunt's motion for plea withdrawal. Accordingly, we affirm.

Upon the foregoing,

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.

Sheila T. Reiff
Clerk of Court of Appeals