OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

March 11, 2025

To:

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

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

Lisa E.F. Kumfer
Electronic Notice

Basil M. Loeb
Electronic Notice

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

2024AP167 State of Wisconsin v. Vincent Tyrone Richardson
(L.C. # 2019CF3243)

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

Vincent Tyrone Richardson appeals an order denying his motion for plea withdrawal. Richardson pled guilty to one count of first-degree reckless homicide. He contends that the circuit court failed to properly explain one of the elements of the offense. He also contends that trial counsel was ineffective for allowing the circuit court to accept his plea, or, alternatively, for failing to seek a plea withdrawal at the time of sentencing. 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 (2021-22).[1]

On July 25, 2019, the State charged Richardson with one count of first-degree reckless homicide with the use of a dangerous weapon and one count of being a felon in possession of a firearm. According to the criminal complaint, on July 22, 2019, a seemingly intoxicated Richardson began shooting a gun into the air outside of his apartment complex. At least one of the bullets struck and killed K.C.

Richardson ultimately pled guilty to first-degree reckless homicide. The weapon enhancer was dropped, and the remaining felon-in-possession charge was dismissed and read-in. The circuit court conducted a colloquy with Richardson, accepted his plea, and sentenced him to twenty years of initial confinement, followed by ten years of extended supervision.

Following sentencing, Richardson moved to withdraw his plea on the grounds that the circuit court conducted a defective plea colloquy and that trial counsel was ineffective. Specifically, Richardson argued that the court's explanation of the "utter disregard for human life" element of first-degree reckless homicide did not follow the pattern jury instruction on that element, resulting in a plea that was not knowing, voluntary, or intelligent. He also argued that trial counsel was ineffective for allowing the court to accept the plea or, alternatively, for failing to move to withdraw the plea before sentencing. The postconviction court denied the motion without a hearing. This appeal follows.

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

In seeking plea withdrawal after sentencing, a defendant "must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (citation omitted). One way to establish a manifest injustice is to show that the plea was not knowingly, intelligently, and voluntarily entered, because when a plea does not meet this standard it "violates fundamental due process." ***State v. Johnson***, 2012 WI App 21, ¶8, 339 Wis. 2d 421, 811 N.W.2d 441 (citation omitted). Another means of demonstrating a manifest injustice is by proving ineffective assistance of counsel. ***State v. Taylor***, 2013 WI 34, ¶49, 347 Wis. 2d 30, 829 N.W.2d 482.

"Whether a plea is knowing, intelligent, and voluntary is a question of constitutional fact." ***Brown***, 293 Wis. 2d 594, ¶19. This court will not disturb findings of historical and evidentiary facts unless they are clearly erroneous, but we review *de novo* whether those facts demonstrate that the defendant's plea was knowing, intelligent, and voluntary. ***Id.***

Richardson's arguments on appeal renew the arguments he made in his postconviction motion; specifically that: (1) the circuit court misstated the meaning of "utter disregard," one of the elements of first-degree reckless homicide; and (2) trial counsel was ineffective.

Richardson's first argument hinges on the following statement made by the circuit court during the plea colloquy: "And then the third thing is that the circumstances of how this occurred, your conduct showed utter disregard for human life. And that's defined as conduct that was dangerous and you knew it was dangerous." Richardson contends that the court's explanation is inconsistent with the jury instruction and was therefore erroneous, warranting a plea withdrawal. We disagree.

First, the relevant jury instruction—WIS JI—CRIMINAL 1020—does not actually define "utter disregard." Rather, the instruction describes circumstances a jury may consider in determining whether a defendant acted with utter disregard:

> In determining whether the circumstances of the conduct showed utter disregard for human life, consider these factors: what the defendant was doing; why the defendant was engaged in that conduct; how dangerous the conduct was; how obvious the danger was; whether the conduct showed any regard for life; and, all other facts and circumstances relating to the conduct.

Id. (footnote omitted).

Next, "the circuit court's only duty is to inform the defendant of the charge's nature or, instead, to ascertain that the defendant in fact possesses such information." ***State v. Trochinski***, 2002 WI 56, ¶20, 253 Wis.2d 38, 644 N.W.2d 891 (internal quotation marks and citation omitted). The court is not required to "thoroughly ... explain or define every element of the offense to the defendant." ***Id.***

Here, the circuit court individually addressed each element of first-degree reckless homicide, verified that Richardson understood the charge, and confirmed with counsel that Richardson understood the charge. While the court equated "utter disregard" with "danger[]," the court's statement does not undermine Richardson's understanding of the elements of the offense or the implications of his plea. As stated, the court was not required to define each element of the offense, *see* ***id.***, and "utter disregard" does not even have a specific definition. Indeed, Richardson's pleading did not even affirmatively allege that he did not know or understand the information which should have been provided at the plea hearing. Upon our review of the record, it is clear that the colloquy, taken together with the plea questionnaire/waiver of rights form, the

addendum, and the attached jury instructions, establish that Richardson entered a knowing, voluntary and intelligent plea.

Because we conclude that Richardson's plea was valid, it follows that trial counsel was not ineffective for allowing the circuit court to accept Richardson's plea or for failing to seek a plea withdrawal at the time of sentencing. Counsel is not ineffective for failing to make meritless arguments. ***State v. Toliver***, 187 Wis. 2d 346, 360, 523 N.W.2d 113 (Ct. App. 1994).

For the foregoing reasons, we affirm the order denying Richardson's postconviction motion.

IT IS ORDERED that the order 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