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 III

July 22, 2025

To:

Hon. Jane M. Sequin
Circuit Court Judge
Electronic Notice

Caroline Brazeau
Clerk of Circuit Court
Marinette County Courthouse
Electronic Notice

Philip J. Brehm
Electronic Notice

Kathleen E. Wood
Electronic Notice

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

2023AP1500-CR State of Wisconsin v. Martin Raymond Bub, Jr.
(L. C. No. 2019CF166)

Before Stark, P.J., Hruz, and Gill, 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).

Martin Bub, Jr., appeals from a judgment convicting him of robbery with threat of force and from an order denying his postconviction motion for plea withdrawal. Bub contends that his trial counsel provided ineffective assistance by failing to inform him, before he entered a no-contest plea, that a repeater allegation, which the State had added in an amended Information to increase the available penalty, could not have been applied to Bub because the amendment was untimely.[1] Based upon our review of the briefs and record, we conclude at conference that

[1] To the extent that Bub makes additional, sporadic arguments that his attorney provided ineffective assistance by threatening to withdraw and that Bub's plea was unknowingly entered, he has not developed those arguments sufficiently to warrant an individual response. *See* ***Libertarian Party of Wis. v. State***, 199 Wis. 2d 790, 801, 546 N.W.2d 424 (1996).

this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2023-24).[2] We affirm on the ground that Bub cannot demonstrate prejudice from counsel's alleged deficient performance, and therefore he cannot establish that plea withdrawal is required to correct a manifest injustice.

A defendant seeking to withdraw a plea after sentencing on grounds other than a defective plea colloquy must demonstrate, by clear and convincing evidence, that refusal to allow plea withdrawal would result in a "manifest injustice," raising "'serious questions affecting the fundamental integrity of the plea.'" ***State v. Dillard***, 2014 WI 123, ¶83, 358 Wis. 2d 543, 859 N.W.2d 44 (citation omitted). Manifest injustice can occur, among other things, when a defendant's plea was not knowingly and voluntarily entered or when a defendant was afforded ineffective assistance of counsel. ***State v. Cajujuan Pegeese***, 2019 WI 60, ¶25, 387 Wis. 2d 119, 928 N.W.2d 590. To establish a claim of ineffective assistance, a defendant must prove two elements: (1) deficient performance by counsel; and (2) prejudice resulting from that deficient performance. ***State v. Sholar***, 2018 WI 53, ¶32, 381 Wis. 2d 560, 912 N.W.2d 89.

Our evaluation of whether a manifest injustice has occurred is based upon the entirety of the record. ***State v. Cain***, 2012 WI 68, ¶31, 342 Wis. 2d 1, 816 N.W.2d 177. We accept the circuit court's findings of historical or evidentiary fact unless they are clearly erroneous, but we independently determine whether those facts are sufficient to establish a constitutional violation. ***State v. Taylor***, 2013 WI 34, ¶25, 347 Wis. 2d 30, 829 N.W.2d 482.

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

Additionally, in evaluating a plea withdrawal motion, the circuit court may assess the credibility of the proffered explanation for the request. *See* ***State v. Kivioja***, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999). We will not overturn credibility determinations on appeal unless the testimony upon which they are based is inherently or patently incredible or in conflict with the uniform course of nature or with fully established or conceded facts. ***Global Steel Prods. Corp. v. Ecklund Carriers, Inc.***, 2002 WI App 91, ¶10, 253 Wis. 2d 588, 644 N.W.2d 269.

Here, it is undisputed that the State impermissibly amended the Information after arraignment to include a repeater allegation under WIS. STAT. § 939.62, in violation of WIS. STAT. § 973.12(1). *See* ***State v. Martin***, 162 Wis. 2d 883, 902-10, 470 N.W.2d 700 (1991). It is also undisputed that the removal of the § 939.62 repeater allegation was part of a negotiated plea deal, which also reduced the charged offense from armed robbery (a Class C felony) to robbery with threat of force (a Class E felony) and dismissed a mandatory minimum sentence enhancer based upon a conviction for a prior serious crime under WIS. STAT. § 939.619(2).

Bub alleged in a postconviction motion that his trial counsel performed deficiently by failing to inform him, prior to entry of the negotiated plea, that the WIS. STAT. § 939.62 repeater allegation in the amended Information could not be applied to him.[3] Bub further alleged that counsel's failure prejudiced Bub because Bub's decision to accept the plea deal was based upon a mistaken belief that he would face six additional years if he were convicted of the improperly enhanced charge in the amended Information. Bub contends that these circumstances were

[3] Bub also claimed in his postconviction motion that the WIS. STAT. § 939.619 mandatory minimum was improperly added to the amended Information, but he does not address on appeal the circuit court's ruling that WIS. STAT. § 973.12 did not prohibit the State from adding a mandatory minimum under § 939.619. Our decision would be the same even if the § 939.619 mandatory minimum enhancer were also improperly added.

substantially similar to those in ***Dillard***, where a defendant was allowed to withdraw his plea because counsel had failed to advise him that a repeater allegation that was dismissed as part of a plea negotiation could not have been applied to him. *See* ***Dillard***, 358 Wis. 2d 543, ¶¶86-104.

Unlike in ***Dillard***, however, here the circuit court made no finding that Bub would not have entered his plea if counsel had informed him that the repeater allegation could not be applied to him. Rather, the court first observed that, aside from removing the improperly added repeater allegation, the plea deal also reduced Bub's sentence exposure from 25 years' initial confinement, with a 5-year mandatory minimum, followed by 15 years' extended supervision to 10 years' initial confinement, with no mandatory minimum, followed by 5 years' extended supervision. The court then found, based upon a series of emails related to the plea negotiations, that Bub himself had proposed, *prior to the amendment of the complaint with the repeater allegation*, that he would plead to the exact charge to which he ultimately pled.

In other words, the circuit court found that Bub's assertion that he would not have entered a no-contest plea to the charge of robbery with threat of force if he had known that the repeater allegation improperly added in the amended complaint could not be applied to him is directly belied by the fact that he had offered to plead to that very charge before the repeater allegation was added. We uphold the circuit court's implied determination that the purported reason for Bub's plea withdrawal request is not credible.

In light of the determination that Bub failed to show that he would have gone to trial if he had been informed that the repeater allegation could not have been applied to him, we need not address the State's additional argument that Bub was not prejudiced because he would have had no "realistic defense" at trial to the charge he faced prior to entry of his plea. *See generally* ***Lee***

v. United States, 582 U.S. 357, 366-67 (2017). We conclude that Bub cannot demonstrate prejudice from counsel's alleged failure to inform him that the repeater allegation could not be applied to him. Thus, Bub has failed to demonstrate any manifest injustice warranting plea withdrawal.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction and postconviction order are summarily affirmed. 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