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DISTRICT II

July 30, 2025

To:

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Circuit Court Judge
Electronic Notice

Rebecca Matoska-Mentink
Clerk of Circuit Court
Kenosha County Courthouse
Electronic Notice

Daniel J. O'Brien
Electronic Notice

Christopher D. Sobic
Electronic Notice

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

2023AP2267-CR State of Wisconsin v. Matthew L. Turner (L.C. #2020CF826)

Before Gundrum, P.J., Grogan, 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).

Matthew L. Turner appeals from a judgment of conviction and an order denying his motion for postconviction relief seeking plea withdrawal based upon an allegedly defective plea colloquy. 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 (2023-24).[1] For the following reasons, we summarily affirm.

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

Turner's 2020 charge for attempted first-degree intentional homicide, as a repeater, in violation of WIS. STAT. § 940.23(1)(1), was ultimately reduced to a charge of first-degree reckless injury, as a repeater, and his charge for possession a firearm by a felon was dismissed and read in. Turner had previously been convicted of armed robbery in 2016, for which he was sentenced to four years of initial confinement.

Turner pleaded guilty to the reduced charge in this appeal on September 13, 2021. Pursuant to the plea questionnaire and a statement made by the State at the start of the plea hearing that same date, "[e]ach party would be free to make sentence recommendations to the Court." The circuit court explained how a "read in" charge could impact a sentence, and what the maximum sentence was for the new, reduced charge (with the repeater enhancer). Turner indicated he understood.

The circuit court also conducted the following colloquy with Turner:

> THE COURT: All right. And, Mr. Turner, do you understand what's happening here?
>
> MR. TURNER: Yes, Your Honor.
>
> THE COURT: Is this what you wish to do?
>
> MR. TURNER: Yes, Your Honor.
>
> ….
>
> THE COURT: ... And is there a sentence concession?
>
> [THE STATE]: No. Both parties free to argue.
>
> ….
>
> THE COURT: There's a paper entitled, "Plea Questionnaire and Waiver of Rights," which has the signature Matthew Turner. Is that your signature?
>
> MR. TURNER: Yes, Your Honor.

THE COURT: It states that you have reviewed the paper and that you understand everything that it says. Is that true?

MR. TURNER: Yes.

….

THE COURT: Have you been satisfied with the legal services that you have received in this case?

MR. TURNER: Yes, Your Honor.

….

THE COURT: Are you acting of your own free will?[2]

MR. TURNER: Yes, Your Honor.

THE COURT: Have you had enough time to discuss this matter with your lawyer?

MR. TURNER: Yes, Your Honor.

THE COURT: Have you had enough time to think about what you are doing?

MR. TURNER: Yes, Your Honor.

THE COURT: Do you think what you are doing is the best thing under all the circumstances?

MR. TURNER: Yes, Your Honor.

THE COURT: Have you been rushed into this?

MR. TURNER: No, Your Honor.

THE COURT: Any questions you want to ask [your attorney] or me before I accept your plea?

MR. TURNER: No, Your Honor.

[2] The circuit court repeated this question and the following four questions verbatim and received the same responses.

The circuit court accepted Turner's guilty plea. At the sentencing hearing in February 2022, the court considered the recommendations of the drafter of the presentence investigation report (PSI) as well as the recommendations of both counsel, and, after hearing statements from Turner, imposed a sentence of 16 years of initial confinement and 5 years of extended supervision, to be served concurrent to Turner's sentence for his past conviction. Turner filed a motion for postconviction relief seeking a withdrawal of his plea based upon several grounds, key of which was that it was not knowingly, intelligently, and voluntarily made because the court failed to address Turner about what it meant that the parties were "free to argue" about sentencing recommendations. Without a hearing, the court issued a written order in November 2023 denying the motion for lack of merit and stating that everyone at the plea hearing understood that the State (and all parties) were free to argue and that Turner understood the maximum sentence.

Turner appeals. He continues to assert that the plea colloquy was defective because the circuit court failed to ascertain his understanding that the State was "free to argue" for sentencing recommendations, and that the court never told him that it was not bound by any of the parties' recommendations. Turner asserts that he is entitled to a hearing at which the State must prove that his guilty plea was knowing, intelligent, and voluntary.

"The [United States] Constitution sets forth the standard that a guilty or no contest plea must be affirmatively shown to be knowing, voluntary, and intelligent." ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986); ***State v. Howell***, 2007 WI 75, ¶23, 301 Wis. 2d 350, 734 N.W.2d 48. Without those three basic prerequisites, "a defendant is entitled to withdraw the plea as a matter of right because such a plea 'violates fundamental due process.'" ***State v.***

Brown, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906 (quoting ***State v. Van Camp***, 213 Wis. 2d 131, 139, 569 N.W.2d 577 (1997)).

Wisconsin requires a circuit court to conduct a personal colloquy with the defendant in order to memorialize what the defendant knew at the time of the plea itself. WIS. STAT. § 971.08(1); ***Bangert***, 131 Wis. 2d at 260. The reason for this personal touch is to "assist the [circuit] court in making the constitutionally required determination that a defendant's plea is voluntary." ***Id.*** at 261.

There must be "manifest injustice" to warrant the withdrawal of a plea after sentencing:

> When a defendant moves to withdraw a plea after sentencing, the defendant "carries the heavy burden of establishing, by clear and convincing evidence, that the [circuit] court should permit the defendant to withdraw the plea to correct a 'manifest injustice.'" Here, the burden is on [the defendant] to prove that plea withdrawal is warranted because "the state's interest in finality of convictions requires a high standard of proof to disturb that plea." Therefore, in order to disturb the finality of an accepted plea, the defendant must show "'a serious flaw in the fundamental integrity of the plea.'"

State v. Cain, 2012 WI 68, ¶25, 342 Wis. 2d 1, 816 N.W.2d 177 (citations omitted). In addressing whether there is manifest injustice, a court may go beyond the plea colloquy itself and look to the totality of the circumstances. ***Id.***, ¶31; ***Bangert***, 131 Wis. 2d at 274-75.

We independently review whether the plea colloquy was statutorily correct and complied with constitutional or judicially imposed mandatory duties. ***State v. Taylor***, 2013 WI 34, ¶¶25-26, 347 Wis. 2d 30, 829 N.W.2d 482. A circuit court may refuse to hold an evidentiary hearing if a postconviction motion fails to allege sufficient facts, contains only conclusory statements, or the record otherwise indicates that no relief is warranted. ***State v. Balliette***, 2011 WI 79, ¶18, 336 Wis. 2d 358, 805 N.W.2d 334. "Whether the record conclusively demonstrates

that the defendant is entitled to no relief is also a question of law [that] we review independently." ***State v. Ruffin***, 2022 WI 34, ¶27, 401 Wis. 2d 619, 974 N.W.2d 432.

It is evident that the circuit court apprised Turner of his possible maximum sentence and that the plea questionnaire explained "that the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty." "Within its discretion, a circuit court may incorporate into the plea colloquy the information contained in the plea questionnaire, relying substantially on that questionnaire to establish the defendant's understanding of the crime." ***State v. Brandt***, 226 Wis. 2d 610, 621, 594 N.W.2d 759 (1999). And, the court "may expressly refer to the record or other evidence of [the] defendant's knowledge of the nature of the charge established prior to the plea hearing." ***Bangert***, 131 Wis. 2d at 268. Here, the court expressly asked Turner if "anyone promised [him] that [he] would not receive the maximum sentence in this case." Turner denied any such promises.

Turner argues semantics and asserts that—simply because the circuit court did not say the "magic words" that it was not bound by sentence recommendations—the court never apprised him of what it meant that the parties were "free to argue" or that the court was free to impose a sentence anywhere on the spectrum of possible punishments. *See* ***State v. Cajujuan Pegeese***, 2019 WI 60, ¶41, 387 Wis. 2d 119, 928 N.W.2d 590 ("[T]here is no indication that requiring the recitation of 'magic words' already contained on a plea questionnaire form, on the record, would advance a defendant's understanding of the constitutional rights waived by pleading guilty or no contest.") The court here confirmed several times that there was no concession on a sentence, that the parties were free to make their own arguments, and implied (as the plea questionnaire plainly said) that it would then take those into consideration and impose a sentence within the statute's parameters. The plea colloquy was replete with those concepts, and Turner

acknowledged the same. The court did not impose the maximum sentence and it disregarded the State's (and the PSI drafter's) recommendation that the sentence be served consecutive to Turner's existing sentence.

Moreover, we decline Turner's invitation to require plea colloquies, in addition to all their other requirements, to contain dialogue ensuring that the defendant understands what "free to argue" means. That is not a mandatory inquiry. *See* ***Bangert***, 131 Wis. 2d at 260. In addition, this was not Turner's first rodeo; according to records on CCAP, he had a similar plea hearing in 2016 in which he also pleaded guilty to one felony count.[3] Thus, Turner had previously reviewed and signed a plea questionnaire and had previously engaged in a plea colloquy with a circuit court. The record of *this* plea hearing, taken with the plea questionnaire, clearly reflects that the court here conducted a proper colloquy and that Turner was fully apprised of his rights and understood all of the terms of the agreement[4] including that all parties were free to argue for their preferred sentence recommendations and that the court was not bound by any recommendation whatsoever.

Because the Record conclusively shows that there was no "manifest injustice" at his plea hearing, we conclude that Turner is not entitled to an evidentiary hearing on his postconviction

[3] Wisconsin's CCAP (Consolidated Court Automation Programs) "is a case management system provided by the Wisconsin Circuit Court Access program," which "provides public access online to reports of activity in Wisconsin circuit courts." ***State v. Bonds***, 2006 WI 83, ¶6, 292 Wis. 2d 344, 717 N.W.2d 133. Appellate courts may take judicial notice of CCAP records. *See* WIS. STAT. § 902.01; *see also* ***State v. Aderemi***, 2023 WI App 8, ¶7 n.3, 406 Wis. 2d 132, 986 N.W.2d 306.

[4] In his reply brief, Turner concedes that he told the circuit court he had reviewed and signed the plea questionnaire and that he understood everything in the form.

motion. *See* ***Taylor***, 347 Wis. 2d 30, ¶¶48, 56; ***State v. Roou***, 2007 WI App 193, ¶15, 305 Wis. 2d 164, 738 N.W.2d 173.

Therefore,

IT IS ORDERED that the judgment and order of the circuit court are 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