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DISTRICT I

August 12, 2025

To:

Hon. Jean M. Kies
Circuit Court Judge
Electronic Notice

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

Donald V. Latorraca
Electronic Notice

David Malkus
Electronic Notice

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

2023AP2223-CR State of Wisconsin v. Ronald Lee Gilbert (L.C. # 2012CF626)

Before White, C.J., Colón, P.J., and Donald, 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).

Ronald Lee Gilbert appeals from the judgment of conviction, entered on his guilty plea, for pandering. He also appeals the denial of his motion for postconviction relief.[1] Gilbert claims he is entitled to an evidentiary hearing on his motion for plea withdrawal. 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).[2] We affirm.

[1] The Honorable David L. Borowski entered the judgment of conviction. The Honorable Jean M. Kies issued the order denying Gilbert's postconviction motion.

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

BACKGROUND

In 2012, the State charged Gilbert with trafficking of a child, second-degree sexual assault of a child, and child abuse. A jury subsequently found Gilbert guilty of the charges. The circuit court sentenced him to 22 years of initial confinement and 12 years of extended supervision.

Gilbert sought postconviction relief and then appealed. We affirmed in part, reversed in part, and remanded for a ***Machner*** hearing.[3] *See* ***State v. Gilbert*** (***Gilbert I***), No 2016AP1852-CR, unpublished slip op. (WI App June 26, 2018). On remand, the circuit court denied Gilbert's motion, and he appealed. We reversed on the grounds that trial counsel was ineffective in several respects and remanded for a new trial. *See* ***State v. Gilbert*** (***Gilbert II***), No 2019AP2182-CR, unpublished slip op. (WI App June 22, 2021).

The parties subsequently entered into a plea agreement. Under the terms of the agreement, Gilbert would plead guilty to one count of pandering in an amended information, the remaining charges of second-degree sexual assault of a child and child abuse would be dismissed and read-in, and the State would make a "time-served recommendation."

Trial counsel filed a plea questionnaire and waiver of rights form before the plea hearing. The form included the standard language specifying that the circuit court was not bound by any plea agreement and included the maximum penalty Gilbert faced.[4] The questionnaire also

[3] *See* ***State v. Machner***, 92 Wis. 2d 797, 804, 285 N.W.2d 905 (Ct. App. 1979).

[4] The form read: "I understand that the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty. The maximum penalty I face upon conviction is: 12 AND 1/2 YEARS PRISON (7 AND 1/2 IC/ 5 ES) AND A $25,000 FINE."

included a notation that the State agreed "to recommend [a] sentence consistent with the time already served."

Before taking Gilbert's plea, the circuit court and the attorneys discussed the maximum penalties for pandering, a Class F Felony punishable by a fine up to $25,000 and a term of imprisonment that does not exceed 12 1/2 years. During the plea hearing, trial counsel clarified for the court that the maximum term of confinement Gilbert faced was seven and one-half years with a maximum term of extended supervision of five years. *See* WIS. STAT. § 973.01(2)(b)6m. & (d)4. (2011-12).

After the circuit court and the attorneys discussed the penalties, including the maximum amount of extended supervision, trial counsel expressed Gilbert's intent to enter a guilty plea. Then, the following exchange occurred:

> THE COURT: Mr. Gilbert, you've been in court. Obviously, you heard that entire conversation from the District Attorney and your attorney, correct?
>
> [GILBERT]: Yes, sir.
>
> THE COURT: And … basically this is an accommodation or resolution that ultimately would have you not serving any additional prison time or time in jail, *but may result in some extended supervision; do you understand that?*
>
> [GILBERT]: Yes, I do.

(Emphasis added).

The circuit court later restated the maximum penalty during the plea colloquy and pointed out that Gilbert had already "served the initial confinement time, *and the only discussion will be potential extended supervision*." (Emphasis added). The court confirmed with Gilbert that he had reviewed the plea questionnaire form with his attorney and then accepted Gilbert's plea.

At sentencing, the State requested a "time-served disposition" without recommending any specific length for the sentence. Trial counsel requested a bifurcated sentence of seven and one-half years of initial confinement and two years of extended supervision. Trial counsel explained that by his calculations, Gilbert had already spent nine years and seven months in custody. When Gilbert's extra time in custody was accounted for, trial counsel asserted that his recommendation would result in "entirely a time-served disposition."

Trial counsel subsequently agreed with the circuit court's assessment that the court was legally required to impose a term of extended supervision that was 25% of the length of the term of confinement. *See* WIS. STAT. § 973.01(2)(d) (requiring a court to impose a term of extended supervision that is not "less than 25 percent of the length of the term of confinement in prison imposed" under § 973.01(2)(b)). The court sentenced Gilbert to seven and one-half years of initial confinement and, based on its § 973.01(2)(d) calculation, two and one-half years of extended supervision. The court granted Gilbert 3,512 days of sentence credit.

Gilbert completed his extended supervision and was discharged from his sentence approximately three months after his sentencing hearing. He subsequently filed a postconviction motion requesting plea withdrawal on the grounds that the circuit court did not advise him that it was not bound by the plea agreement and because he did not understand that information. The postconviction court denied the motion without an evidentiary hearing. This appeal follows.

DISCUSSION

A postconviction court must hold an evidentiary hearing on a motion for plea withdrawal if the motion: (1) makes a prima facie showing that the plea was defective under WIS. STAT. § 971.08 or other court-mandated duties; and (2) alleges that the defendant in fact did not know

or understand information that should have been provided during the plea colloquy. ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). Relevant to Gilbert's appeal, a circuit court "must advise the defendant personally on the record that the court is not bound by any plea agreement and ascertain whether the defendant understands the information." ***State v. Hampton***, 2004 WI 107, ¶20, 274 Wis. 2d 379, 683 N.W.2d 14. In deciding whether a defendant is entitled to an evidentiary hearing on a motion for plea withdrawal, an appellate court independently reviews the issue. ***State v. Howell***, 2007 WI 75, ¶30, 301 Wis. 2d 350, 734 N.W.2d 48.

The State concedes that Gilbert's assertion that he did not understand that the court was not bound by the plea agreement satisfied the second pleading requirement for obtaining a hearing. Consequently, the sole issue for this court to resolve is whether Gilbert made a prima facie showing that the circuit court failed to advise him that it was not bound by the parties' plea agreement.

The State acknowledges that during the plea colloquy, the circuit court did not expressly ask Gilbert, "Do you understand that the court is not bound by a sentencing recommendation or other terms of the plea agreement?" The State, however, goes on to correctly assert that the court was not required to use "magic words or an inflexible script" when it advised Gilbert that it was not bound to follow the plea agreement. ***Hampton***, 274 Wis. 2d 379, ¶43. Rather, the question is whether Gilbert had "enough information and understanding of the court's independent role in sentencing, notwithstanding any plea agreement" in order to enter a knowing, voluntary, and intelligent plea. ***Id.***

We conclude that the answer to the preceding question is yes. Notwithstanding both parties' requests for a time-served disposition, the circuit court, on more than one instance, stated

that the potential extended supervision Gilbert faced was at issue. Both before and during the plea colloquy, Gilbert indicated his understanding of the maximum penalty he faced, which included up to five years of extended supervision. Despite the fact that the court did not utilize scripted language to tell Gilbert the parties' plea agreement did not bind it, Gilbert had enough information and understanding to know that he faced the potential imposition of additional extended supervision time.

Gilbert has not made a prima facie showing that the plea was defective under WIS. STAT. § 971.08 or other court-mandated duties. Because he failed as to the first pleading requirement, an evidentiary hearing was not required.[5]

Therefore,

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.

[5] In light of this conclusion, we do not delve into the State's alternative harmless-error argument for affirmance. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

Samuel A. Christensen
Clerk of Court of Appeals