CERTIFICATION IN COMPLIANCE WITH RULE 809.19(12)

I hereby certify to the following: I have submitted an electronic copy of this petition, excluding the appendix, if any, which complies with the requirements of § 809.62(4)(b) and 809.19(12); this electronic petition is identical in content and format to the printed form of the petition filed on or after this date; and, a copy of this certificate has been served with the paper copies of this petition filed with the court and served on all opposing parties.

August 19, 2021

Signed:

TIMOTHY O'CONNELL
Attorney
State Bar No. 1063957

CERTIFICATION AS TO FORM/LENGTH

I certify that this petition meets the form and length requirements of Rules 809.19(8)(b) and 809.62(4) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the petition is 4089 words.

August 19, 2021

Signed:

TIMOTHY O'CONNELL
Attorney
State Bar No. 1063957

APPENDIX TABLE OF CONTENTS

PURSUANT TO THE WISCONSIN RULES OF APPELLATE PROCEDURE, THE FOLLOWING ITEMS ARE REPRODUCED IN THIS APPENDIX:

STATE OF WISCONSIN, CIRCUIT COURT, FOREST COUNTY

For Official Use: FILED
MAR 19 2018
CIRCUIT COURT
FOREST COUNTY, WI
BY PENNY CARTER

State of Wisconsin, Plaintiff,
-vs-

Plea Questionnaire/ Waiver of Rights

Matthew J. Christenson, Defendant Case No. 17CF42
Name

I am the defendant and intend to plea as follows:

Charge/Statute	Plea	Charge/Statute	Plea
See attached, as to charges: ~~1, 3, 4, and 11.~~	☐ Guilty ☐ No Contest		☐ Guilty ☐ No Contest
4, 7, 9 and 11	☒ Guilty ☐ No Contest		☐ Guilty ☐ No Contest

☐ See attached sheet for additional charges.

I am 33 years old. I have completed 13 years of schooling.

I	☒ do	☐ do not	have a high school diploma, GED, or HSED.
I	☒ do	☐ do not	understand the English language.
I	☒ do	☐ do not	understand the charge(s) to which I am pleading.
I	☒ am not	☐ am	currently receiving treatment for a mental illness or disorder.
I	☒ have not	☐ have	had any alcohol, medications, or drugs within the last 24 hours.

Constitutional Rights

I understand that by entering this plea, I give up the following constitutional rights:

- ☒ I give up my right to a trial.
- ☒ I give up my right to remain silent and I understand that my silence could not be used against me at trial.
- ☒ I give up my right to testify and present evidence at trial.
- ☒ I give up my right to use subpoenas to require witnesses to come to court and testify for me at trial.
- ☒ I give up my right to a jury trial, where all 12 jurors would have to agree that I am either guilty or not guilty.
- ☒ I give up my right to confront in court the people who testify against me and cross-examine them.
- ☒ I give up my right to make the State prove me guilty beyond a reasonable doubt.

I understand the rights that have been checked and give them up of my own free will.

Understandings

- I understand that the crime(s) to which I am pleading has/have elements that the State would have to prove beyond a reasonable doubt if I had a trial. These elements have been explained to me by my attorney or are as follows: ☒ See Attached sheet.
- 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: 123 and 1/2 years incarceration and $ 310,000 fine
- I understand that the judge must impose the mandatory minimum penalty, if any. The mandatory minimum penalty I face upon conviction is: _____
- I understand that the presumptive minimum penalty, if any, I face upon conviction is: _____

The judge can impose a lesser sentence if the judge states appropriate reasons.

Understandings

- I understand that if I am placed on probation and my probation is revoked:
  - if sentence is withheld, the judge could sentence me to the maximum penalty, or
  - if sentence is imposed and stayed, I will be required to serve that sentence.
- I understand that if I am not a citizen of the United States, my plea could result in deportation, the exclusion of admission to this country, or the denial of naturalization under federal law.
- I understand that if I am convicted of any felony, I may not vote in any election until my civil rights are restored.
- I understand that if I am convicted of any felony, it is unlawful for me to possess a firearm.
- I understand that if I am convicted of any violent felony, it is unlawful for me to possess body armor.
- I understand that if I am convicted of a serious child sex offense, I cannot engage in an occupation or participate in a volunteer position that requires me to work or interact primarily and directly with children under the age of 16.
- I understand that if any charges are read-in as part of a plea agreement they have the following effects:
  - Sentencing – although the judge may consider read-in charges when imposing sentence, the maximum penalty will not be increased.
  - Restitution – I may be required to pay restitution on any read-in charges.
  - Future prosecution – the State may not prosecute me for any read-in charges.
- I understand that if the judge accepts my plea, the judge will find me guilty of the crime(s) to which I am pleading based upon the facts in the criminal complaint and/or the preliminary examination and/or as stated in court.

Voluntary Plea

I have decided to enter this plea of my own free will. I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement. The plea agreement will be stated in court or is as follows: ☒ See Attached.

Defendant's Statement

I have reviewed and understand this entire document and any attachments. I have reviewed it with my attorney (if represented). I have answered all questions truthfully and either I or my attorney have checked the boxes. I am asking the court to accept my plea and find me guilty.

Signature of Defendant — Date: 3-19-18

Attorney's Statement

I am the attorney for the defendant. I have discussed this document and any attachments with the defendant. I believe the defendant understands it and the plea agreement. The defendant is making this plea freely, voluntarily, and intelligently. I saw the defendant sign and date this document.

Signature of Attorney — Date: 3-19-18

State v. Matthew J. Christenson
Forest County Case # 17–CF–42

Defendant Matthew J. Christenson will plead as follows:

Amend to 948.02(2) Second Degree Sex Assault of Child under 16

Count 1: ~~940.225(2)(d) Second Degree Sex Assault~~

9 ☐ Guilty — Class C Felony
Maximum 40 years incarceration and $ 100,000 fine

MC SLC dob 4-14-04

date of offense: approximately ~~during summer of 2015~~
~~Victim B.R.D., d/o/b 8-29-1999.~~

Amend to As amended between 1-1-10 and 3-17-17

Count 3: 948.02(2) Second Degree Sex Assault of Child Under 16 Years of Age

7

☑ Guilty — Class C Felony
MC
Maximum 40 years incarceration and $ 100,000 fine

between 1-1-2010 and 2-17-14

date of offense: approximately ~~during summer of 2015~~
~~Victim K.E., d/o/b 11-29-1999~~
LBC dob 6-27-2000

As Amended:

Count 4: 948.02(2) Second Degree Sex Assault of Child Under 16 Years of Age

☑ Guilty — Class C Felony
MC
Maximum 40 years incarceration and $ 100,000 fine

date of offense: approximately on or between
June 1, 2014 and March 17, 2017
Victim J.A.C., d/o/b 5-21-2001

Count 11: 948.03(3)(b) Physical Abuse of a Child

☑ Guilty — Class I Felony
MC
Maximum 3 ½ years incarceration and $ 10,000 fine

date of offense: approximately on or between
April 2016 and August 2016
Victim M.C.J., d/o/b 6-16-2003

The following charges to be dismissed and read in:
Counts 2, 6, ~~7~~ 9, 12, 13, 14
1, 3

The following charges to be dismissed outright:
Counts 5, 8, 10

In exchange for the above pleas, the parties jointly recommend the following:

Count 1:	25 years total imprisonment, to include: 15 years initial confinement 10 years extended supervision
Count 3:	25 years total imprisonment, to include: 15 years initial confinement 10 years extended supervision
Count 4:	25 years total imprisonment, to include: 15 years initial confinement 10 years extended supervision
Count 11:	3 ½ years total imprisonment, to include: 1 ½ years initial confinement 2 years extended supervision

All the above to run concurrently.

The parties further request that the court order a presentence investigation and report.

The parties further request that the court find the defendant eligible for sentence adjustment on each of the above counts in accord with § 973.195, Stats.

1213 SECOND DEGREE SEXUAL ASSAULT: SEXUAL CONTACT OR INTERCOURSE WITH A PERSON THE DEFENDANT KNOWS IS UNCONSCIOUS — § 940.225(2)(d)

Statutory Definition of the Crime

Second degree sexual assault, as defined in § 940.225(2)(d) of the Criminal Code of Wisconsin, is committed by one who has sexual [contact] [intercourse] with a person who the defendant knows is unconscious.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

Elements of the Crime That the State Must Prove

1. The defendant had sexual [contact] [intercourse] with (name of victim).
2. (Name of victim) was unconscious[1] at the time of the sexual [contact] [intercourse].
3. The defendant knew that (name of victim) was unconscious at the time of the sexual [contact] [intercourse].[2]

Meaning of ["Sexual Contact"] ["Sexual Intercourse"]

REFER TO WIS JI-CRIMINAL 1200A FOR DEFINITION OF "SEXUAL CONTACT" AND WIS JI-CRIMINAL 1200B FOR DEFINITION OF "SEXUAL INTERCOURSE" AND INSERT THE APPROPRIATE DEFINITION HERE.

2104 SECOND DEGREE SEXUAL ASSAULT OF A CHILD: SEXUAL CONTACT OR INTERCOURSE WITH A PERSON WHO HAS NOT ATTAINED THE AGE OF 16 YEARS — § 948.02(2)

Statutory Definition of the Crime

Second degree sexual assault of a child, as defined in § 948.02(2) of the Criminal Code of Wisconsin, is committed by one who has sexual [contact] [intercourse] with a person who has not attained the age of 16 years.

State's Burden of Proof

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following two elements were present.

Elements of the Crime That the State Must Prove

1. The defendant had sexual [contact] [intercourse] with (name of victim).

2. (Name of victim) was under the age of 16 years at the time of the alleged sexual [contact] [intercourse].

Knowledge of (name of victim)'s age is not required[1] and mistake regarding (name of victim)'s age is not a defense.[2]

Consent to sexual [contact] [intercourse] is not a defense.[3]

Meaning of [Sexual Contact] [Sexual Intercourse]

REFER TO WIS JI-CRIMINAL 2101A FOR DEFINITION OF "SEXUAL CONTACT" AND WIS JI-CRIMINAL 2101B FOR DEFINITION OF "SEXUAL INTERCOURSE" AND INSERT THE APPROPRIATE DEFINITION HERE.

THIS INSTRUCTION IS TO BE USED ONLY FOR OFFENSES COMMITTED ON OR AFTER JULY 1, 1989.

2112 PHYSICAL ABUSE OF A CHILD: RECKLESSLY CAUSING BODILY HARM — § 948.03(3)(b)

Physical abuse of a child, as defined in § 948.03(3)(b) of the Criminal Code of Wisconsin, is committed by one who recklessly causes bodily harm to a child.

Before the defendant may be found guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following three elements were present.

First, that the defendant caused bodily harm to (name of victim).

Second, that the defendant recklessly caused such harm.

Third, that (name of victim) had not attained the age of 18 years at the time of the alleged offense.

The first element requires that the defendant caused bodily harm to (name of victim). Bodily harm means physical pain or injury, illness, or any impairment of physical condition.[1]

The second element requires that the defendant recklessly caused such harm. This requires that the defendant's conduct created a situation of unreasonable risk of harm to (name of victim) and demonstrated a conscious disregard for the safety of (name of victim).[2]

In determining whether the conduct created an unreasonable risk of harm and showed a conscious disregard for the safety of (name of victim), you should consider all the factors relating to the conduct. These include the following: what

the defendant was doing; why he was doing it; how dangerous the conduct was; how obvious the danger was; and whether the conduct showed any regard for the safety of (name of victim).[3]

The third element requires that (name of victim) had not attained the age of 18 years at the time of the alleged offense. Knowledge of (name of victim)'s age by the defendant is not required[4] and mistake regarding (name of victim)'s age is not a defense.[5]

If you are satisfied beyond a reasonable doubt from the evidence in this case that the defendant recklessly caused bodily harm to (name of victim) and that (name of victim) had not attained the age of 18 years at the time of the alleged offense, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

COMMENT

Wis JI-Criminal 2112 was approved by the Committee in June 1989.

Section 948.03 defines crimes relating to the physical abuse of children. Subsection (2) identifies three types of intentional physical abuse. Subsection (3) identifies three types of reckless physical abuse.

This instruction is for a violation of § 948.03(3)(b), created by 1987 Wisconsin Act 332 as part of the revision of the criminal statutes relating to crimes against children. It applies to offenses committed on or after July 1, 1989. The penalty for this offense is that of a Class E felony.

1. This is the definition of "bodily harm" provided in § 939.22(4).

2. The definition of "recklessly" is the one provided in § 948.03(1). Note that this definition is different from the definition of "criminal recklessness" in § 939.24.

3. This paragraph is modelled after the one used for crimes involving recklessness as defined in § 939.24. See, for example, Wis JI-Criminal 1020. It is believed to be appropriate here because, even though "recklessly" is defined differently in § 948.03, the basic concept is the same — all the circumstances relating to the conduct should be considered in considering whether it created an unreasonable risk of harm and whether it showed conscious disregard for safety.

 (Rel. No. 23—8/89)

STATE OF WISCONSIN CIRCUIT COURT FOREST COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

MATTHEW J. CHRISTENSON,

Defendant.

CASE NO. 17-CF-42
Plea Hearing

TRANSCRIPT OF PROCEEDINGS
HELD BEFORE **HON. PATRICK O'MELIA**
ON **MARCH 19TH, 2018**, IN CRANDON, WISCONSIN

A P P E A R A N C E S

For the Plaintiff: CHARLES SIMONO
District Attorney
Forest County Courthouse
200 East Madison
Crandon, WI 54520

For the Defendant: ANDREW M. MORGAN
Attorney at Law
PO BOX 1962
Wausau, WI 54401

Defendant appearing in person.

JOLENE K. GILLIGAN
CIRCUIT COURT REPORTER
200 East Madison Street
Crandon, WI 54520
Telephone (715) 478-2420

TRANSCRIPT OF PROCEEDINGS:

THE COURT: There is an action in Forest County Circuit Court, State of Wisconsin versus Matthew Christenson. He appears in person with Attorney Morgan. The State appears by Mr. Simono. It is set today for a plea. It is my understanding that it has been resolved, Mr. Simono.

MR. SIMONO: It has, Judge. What I would like to note for the record, consistent with that plea there are a few wrong charges. We will correct that today. My understanding is that Mr. Christenson will be pleading to Count Four as reflected in the Amended Information, and Count Seven and Nine will be amended and will do so now to also to be consistent with Count Four regards to the charge which would be Amendment to 948.02 (2) and with the reflection would be intercourse for each of the respective victims seven and nine and then also to Count Eleven.

In regard to the incest charges Five, Eight, and Ten, those would be dismissed out right. Are you guys agreeing to the rest being read in?

MR. MORGAN: Yes. Any remaining counts would be dismissed and read in.

THE COURT: What is being dismissed out right?

MR. MORGAN: Five, Eight and Ten.

MR. SIMONO: I will note for the record that there's a joint recommendation, if the Court wants to know

that now or after.

THE COURT: Go ahead.

MR. SIMONO: Under the Count Four, Seven, and Nine-- And I should note I got a seconded Amended Information being generated as we speak. So, it reflects everything, proper language wise, that will be brought up here this morning.

Under those three counts and both parties are recommending a 25-year term bifurcated, 15 years of incarceration and 10 years of extended supervision and to run concurrent to each other. Count 11 would be an I felony three-and-a-half with the one-and-a-half years incarceration two years extended supervision. I said that backwards. Two-year incarceration, one-and-a-half ES and--but also concurrent to everything else. And there would be some other provision as such as the fact that I will be joining in with the Defense asking the Court to find him eligible, Mr. Christenson eligible for the SAR--

MR. MORGAN: Sentence adjustment.

MR. SIMONO: --under 9713.195.

THE COURT: That your understanding of the agreement here, Mr. Morgan?

MR. MORGAN: Yes, Your Honor.

THE COURT: And you're moving to dismiss as stated?

MR. SIMONO: The incest charge, yes, and moving to dismiss and read in the other counts.

THE COURT: All right. And those motions are granted. And to Count Four sexual assault of a child under the age of 16 and Count Seven sexual assault of a child under the age of 16, Count Nine sexual assault of a child under the age of 16 and Count 11 physical abuse of a child, how does your client wish to plead?

MR. MORGAN: Guilty.

THE COURT: Is that correct, Mr. Christenson?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I am looking at the Plea Questionnaire and Waiver of Rights form. Is that your signature on the second page?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And on the front page did you and your lawyer go through those charges and check mark your constitutional rights?

THE DEFENDANT: Yes.

THE COURT: By having those checked off, are you telling me that you read them and you understand them and you want to give up those rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And by entering a plea of guilty today we are not going to have a trial and we are not going to

have a jury come in and we are not going to be calling any witnesses. Knowing that you have those rights, do you wish to plead guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: At the trial the State would have to prove elements of these offenses beyond a reasonable doubt. And the elements for the physical abuse of a child, they would have to prove beyond a reasonable doubt again that you did cause bodily harm to a child and that you recklessly caused such bodily harm. Reckless means that your conduct created a situation of unreasonable risk of harm to the victim and demonstrated a conscious disregard for the victim. Do you understand what they would have to prove?

THE DEFENDANT: Yes.

THE COURT: And, finally, they would have to prove the child did not obtain the age of 18 at the time of the offense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And knowledge of the age of the victim is not a defense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now for the other offenses, they would have to prove beyond a reasonable doubt that you did have sexual intercourse with a victim and in this one count JAC, date of birth 5/21/2001. And they would have to prove

that the child was under the age of 16 at the time of the intercourse. I want you to know that age--or knowledge of the age is not required. A mistake regarding the age is not a defense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And consent to intercourse is not a defense. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And intercourse means any intrusion however slight by any part of a person's body or any object into the genital opening or anal opening of another. Do you understand that definition?

THE DEFENDANT: Yes.

THE COURT: Sexual intercourse may be done by you or upon your instruction. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Count Seven is the same except for the victim is different, but they would have to prove the same element. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And for nine, they would have to prove the same elements only occurred with SLC, date of birth 4/4/2004. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, as I said, typically you have

to prove all of these elements beyond a reasonable doubt. By entering a plea today, you are admitting to those elements, and they don't have to prove anything now. Knowing that, do you wish to plead guilty?

THE DEFENDANT: Yes.

THE COURT: There is an agreement here of sorts and the Court is not bound to the agreement. The Court can give you the maximum today. If I put it over and order a presentence investigation, the recommendation in the presentence are again non-binding to the Court. I can still give you the maximum. And the maximum for the sexual assault of a child is a fine of not more than $100,000, imprisonment not more than 40 years, or both. It says to Court Four and Count Seven $100,000 and not more than 40 years. And Count Nine, $100,000 and not more than 40 years. And for the physical abuse a fine of not more than 10,000, prison of not more than three years and six months, or both. I can stack those on top of each other. Knowing that, I could do that today, do you wish to proceed with guilty?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Has anybody made any threats or promises to you to get you--in order to get you to waive your right today and enter your pleas?

THE DEFENDANT: No.

THE COURT: You are 33 years old?

THE DEFENDANT: Yes.
THE COURT: And you obtained your HSED and some college?
THE DEFENDANT: Yes.
THE COURT: And you are able to read and write?
THE DEFENDANT: Yes.
THE COURT: And you understand what you're pleading guilty to today?
THE DEFENDANT: Yes.
THE COURT: And are you under the influence of any alcohol or drugs at this time?
THE DEFENDANT: No.
THE COURT: Do you suffer any mental illness at all that makes it difficult for you to understand what is going on around you?
THE DEFENDANT: No.
THE COURT: Have you had enough time to think about this?
THE DEFENDANT: Yes.
THE COURT: Do you understand that if you are not a citizen of the United States your plea could result in your deportation or exclusion of admission to this country or denial of naturalization under federal law?
THE DEFENDANT: Yes.
THE COURT: Do you understand that if convicted

of a felony you may not vote in any election until your civil rights are stored?

THE DEFENDANT: Yes.

THE COURT: Do you understand that if convicted of a felony you are not allowed to possess a firearm?

THE DEFENDANT: Yes.

THE COURT: If you're convicted of a serious child sex offense, you cannot engage in an occupation or participate in a volunteer position that requires you to work or interact primarily and directly with a child under the age or under the age of 16. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You do have some read ins here, apparently. And in other words, you're not being found guilty of those and not pleading guilty to those but the Court, since they are read in, can consider those at the time of sentencing. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Mr. Morgan, did you have enough time to talk to your client in these matters?

MR. MORGAN: Yes.

THE COURT: Do you think he understands the nature and ramifications of his plea?

THE DEFENDANT: Yes.

THE COURT: Do you think that he is waiving his

rights and entering a plea freely, voluntarily, and intelligently?

MR. MORGAN: Yes.

THE COURT: Do you agree with that, Mr. Christenson?

THE DEFENDANT: Yes.

THE COURT: Okay. The Court will find that he has freely, voluntary, and intelligently waived his rights and is entering his pleas and direct to enter the plea into the record. I am familiar with the facts here and had a chance to review the Complaint, and there's a factual basis for the pleas. We will find Mr. Christenson guilty of three counts of sexual assault of a child under the age of 16 and one count of physical abuse of a child. And, maybe, anticipated this but the Court will be ordering a presentence investigation.

I typically do not require that the author of the presentence be present at sentencing. Do you require that, Mr. Morgan?

MR. MORGAN: No.

THE COURT: Mr. Simono?

MR. SIMONO: I do not, Judge.

THE COURT: All right. So, that should be checked off, and I signed the order.

MR. MORGAN: We are looking at a date in May.

THE CLERK: May 14th at 1:30.

THE COURT: Go off the record for scheduling.

(Recess taken.)

THE COURT: We will set this for May 14th at 1:30. Do we anticipate witnesses, Mr. Simono?

MR. SIMONO: Your Honor, it is a potential, yes, Judge. If I have witnesses, I can't imagine it being more than four.

THE COURT: I would set aside, I guess, the afternoon. So, do you think it will take longer than a couple hours, Mr. Morgan?

MR. MORGAN: Um, no. I want to reserve for the Defense the opportunity to present witnesses as well.

THE COURT: Very good. Okay. We will take as long as we need on that day.

THE CLERK: Remanded or continuing bond?

MR. SIMONO: Ask that we cancel the bond at this time, Judge. We haven't got to that part but ask that option of bond be taken.

THE COURT: We will remand and await sentencing. If there is nothing else, Mr. Simono, you're going to file the second Amended Information?

MR. SIMONO: I am doing that right now, just authenticating a copy for Mr. Morgan and his client.

THE COURT: Reflect exactly what occurred earlier here?

MR. SIMONO: It does.

THE COURT: All right. If there is nothing else, we will see everyone on the 14th.

(Proceedings adjourned.)

* * *

CERTIFICATE

STATE OF WISCONSIN)
)
FOREST COUNTY)

I, Jolene Gilligan, a stenographic machine shorthand reporter, Official Court Reporter for Forest and Florence County, employed in the State of Wisconsin, do hereby certify that I took in shorthand the foregoing proceedings in a hearing in Circuit Court for Forest County at the Courthouse in the City of Crandon, Wisconsin, on the 19th day of March, 2018, with the Honorable Patrick O'Melia, Circuit Court Judge, presiding, and that the foregoing is a true and correct transcript of my shorthand notes and of the whole thereof.

Dated in Crandon, Wisconsin, this 25th day of November, 2018.

Jolene Gilligan (Signed Electronically)

Jolene Gilligan, Court Reporter
Forest & Florence County, Wisconsin

STATE OF WISCONSIN CIRCUIT COURT FOREST COUNTY

STATE OF WISCONSIN,

Plaintiff.

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

-vs-

Matthew J. Christenson,

Defendant.

Case No. 17CF42

The defendant, appearing specially by his attorney and reserving his right to challenge the court's jurisdiction, moves the Court to permit him to withdraw his guilty pleas. The defendant brings this motion pursuant to section 971.08 and 809.30 of the Wisconsin Statutes, and *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), *Ernst v. State*, 43 Wis. 2d 661, 17 N.W.2d 713 (1969), *State v. Bentley*, 201 Wis.2d 303, 548 N.W.2d 50 (1996), *State v. Hampton*, 2004 WI 107, 274 Wis.2d 379, 683 N.W.2d 14, and *State v. Reppin*, 35 Wis. 2d 377, 151 N.W.2d 9 (1967).

AS GROUNDS, defendant asserts the following:

A defendant whom desires to withdraw his plea post sentencing must show by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. *State ex rel. Warren v. Schwarz*, 291 Wis.2d 615, 635, 579 N.W.2d 698 (1998). This can be accomplished by showing the plea was not entered knowingly, voluntarily, and intelligently. *State v. Rodriguez*, 221 Wis.2d 487, 492, 585 N.W.2d 701 (Ct. App. 1998).

In *State v. Brown*, the court encountered a plea withdrawal issue. In said case the defendant was incorrectly informed by the prosecutor and his defense counsel that the crimes he was pleading to did not require sex registration. *State v. Brown*, 2004 WI App. 179, ¶3, 276 Wis.2d 559, 687 N.W.2d 543. This issue was of importance to the defendant. *State v. Brown*, 2004 WI App. 179 at P13. As a result, the reviewing court concluded that the defendant could not have entered his pleas knowingly and voluntarily, and it then permitted him to withdraw his pleas. *State v. Brown*, 2004 WI App. 179 at P14.

In Christenson's case, he was charged with 14 counts with crimes that ranged from a class B felony to I felonies. In an attempt to resolve the case, Christenson explained to appellate counsel that Andrew Morgan emailed Attorney Charles Simono an offer in which the state would be a joint recommendation for a total of five years initial confinement followed by ten years extended supervision. Subsequently, on approximately March 16, 2018, Attorney Morgan, Attorney Simono, and the defendant met. At that time, Attorney Simono indicated five years was too low, and he then counteroffered with 15 years initial confinement followed by 15 years extended supervision. In response, attorney Morgan offered 15 years initial confinement followed by 10 years extended supervision but with sentence adjustment so that Christenson would only need to serve 75% of that time. Attorney Simono indicated he would accept that deal.

Nonetheless, Christenson still expressed uncertainty with the deal. Attorney imono explained to Christenson that sentence adjustment meant he would have to behave, his programs within the prison, make sure he filed the paperwork six months before his lease, and then Attorney Simone indicated he would approve it and then the judge would sign on it. Later yet, when Christenson and Attorney Morgan were alone, Christenson indicated his uncertainty whether he should take the deal. At that time, Attorney Morgan indicated he would either get life if he went to trial (since he would lose), or otherwise he could get 10 years (15 years x .75, minus one year credit = a little more than 10 years). Ultimately, Christenson chose to take the 10 years and he entered guilty pleas consistent with the plea deal.

However, in reviewing the sentence adjustment statute, it appears it not only was a legal impossibility, but it never was a guarantee. Under Wis. Stat. 973.195, since he pled to class C felonies, he would need to serve 85% of his time, and not 75%. Furthermore, after serving 85% of his time, even with the prosecutor's blessing, the victims would still need to sign on it as well the judge before the defendant could be released; consequently, there is not a guarantee he would be released early after doing any of his time. Wis. Stat. 973.195(1r)(c) and (e

Christenson claims the plea deal was specifically designed so that he could get out after doing 75% of his time; however, as indicated above, that was a legal impossibility as well as no guarantee. Had he known this, he would not have entered the guilty pleas.

Considering the above, it is requested that Christenson be permitted to withdraw his pleas.

August 14, 2019

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STATE OF WISCONSIN : CIRCUIT COURT : FOREST COUNTY

****

STATE OF WISCONSIN,

Plaintiff,

COPY

vs. Case No. 17-CF-42

MATTHEW J. CHRISTENSON,

Defendant.

****

MOTION HEARING

BEFORE: PATRICK F. O'MELIA
Oneida County Circuit Judge, Branch I

RHINELANDER, WISCONSIN
MAY 29, 2020

JEAN WOOD, RMR, CRR
Official Circuit Court Reporter
Oneida County Circuit Court, Branch I,
Rhinelander, Wisconsin 54501

A P P E A R A N C E S

CHARLES SIMINO, District Attorney, Forest County Courthouse, 200 East Madison Street, Crandon, WI, 54520, appeared by audiovisual means via Zoom on behalf of the Plaintiff, the State of Wisconsin.

O'CONNELL LAW OFFICE, by TIMOTHY O'CONNELL, 403 South Jefferson Street, Green Bay, WI, 54301, appeared by audiovisual means via Zoom on behalf of the Defendant, Matthew J. Christenson, who appeared by audiovisual means via Zoom from the Green Bay Correctional Institution.

I N D E X

E X H I B I T S

NONE.

P R O C E E D I N G S

THE COURT: In any event, we have Forest County Case Number 17-CF-42, State versus Matthew Christenson. He appears by audiovisual from the prison system. His attorney, Mr. O'Connell, appears by audiovisual. The State appears by Mr. Simono by audiovisual. And we do have -- utilizing the Zoom platform. And I do have a court reporter taking these down.

And we're here for a motion to withdraw plea, and I just received some other documents yesterday.

Mr. Simono, did you receive those?

MR. SIMONO: I received a couple documents today. Bear with me one second.

They are marked as Exhibit A and B. One is a bunch of emails between Mr. Morgan and myself. That's Exhibit A. And Exhibit B is a SPD appellate questionnaire, one page.

THE COURT: All right. That's what we have.

MR. SIMONO: Yeah. I got that today. I've reviewed it.

THE COURT: All right. And did you have any witnesses you were going to call,

Mr. Morgan -- or -- excuse me -- Mr. O'Connell?

MR. O'CONNELL: Yes. I'd like to first call Attorney Morgan.

THE COURT: All right.

Mr. Morgan, were you intending to appear by video as well or just audio?

MR. MORGAN: Audio.

THE COURT: All right. Could you raise your right hand, please.

MR. MORGAN: I am doing so.

ANDREW MORGAN,

called as a witness herein, after having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes, Your Honor.

THE COURT: Okay. We'll start with Mr. O'Connell.

Go ahead.

D I R E C T E X A M I N A T I O N

BY MR. O'CONNELL:

Q. Attorney Morgan, you once represented Matthew Christenson on a Forest County case, 17-CF-42; is that correct?

A. Yes.

Q. And you were provided a copy of the post-conviction motion to withdraw guilty plea; is that correct?

A. Yes.
Q. And did you have an opportunity to review the motion?
A. Yes.
Q. Now in the motion it indicates that there was a plea deal that was reached. I'd like to discuss this with you.
A. Okay.
Q. Do you recall the D.A. giving (unintelligible) --
(Court reporter requested clarification.)
MR. O'CONNELL: Do you want me to repeat?
COURT REPORTER: Yes, please.
MR. O'CONNELL: Do you want me to start over?
COURT REPORTER: Yes. That would be wonderful.
THE WITNESS: Mr. O'Connell?
MR. O'CONNELL: Yes.
THE WITNESS: I'm having a little difficulty too understanding. So if you could speak very distinctly, slow it down just a little that will help.
MR. O'CONNELL: Okay.

BY MR. O'CONNELL: {Cont'd.}
Q. Attorney Morgan, you once were --
(Court reporter requested clarification.)
THE COURT: Yeah. Your screen froze, Mr. O'Connell, for about five seconds so . . .
MR. O'CONNELL: Oh. I'm sorry.
BY MR. O'CONNELL: {Cont'd.}
Q. Attorney Morgan, you once represented Matthew Christenson on a Forest County case, 17-CF-42; is that correct?
A. Correct.
Q. And were you provided a copy of the post-conviction motion to withdraw a guilty plea?
A. Yes.
Q. And did you have an opportunity to review that motion?
A. Yes.
Q. Now in the motion it indicates that there was a plea deal that was reached. I'd like to discuss this with you.
A. Okay.
Q. Do you recall what date you became counsel for Mr. Christenson?
A. Not in my own memory. I would have to refer to any

documentation of that.
Q. Would you agree that May 2017 may be right?
A. Yes.
Q. Now I filed an Exhibit A which is emails between you and the prosecutor. Did you receive this packet via email from my office?
A. Yes.
Q. Do you agree those were emails between yourself and the prosecutor?
A. They appear to be, yes.
Q. And everything in those emails, are they accurate as best you know?
A. Yes.
Q. Now I see that the emails indicate you met with the prosecutor on March 13 at the jail. Do you believe, in fact, that you met the prosecutor and the defendant to resolve this case on March 13th?
A. I can't say the date, but, yes, I did sit down in person with both Mr. Christenson and the prosecutor at one time in the jail to negotiate.
Q. Do you agree that the emails indicate that you met on March 13th?
A. Yes.
Q. And do you have any reason to dispute that?
A. No.

Q. Now I see that there was a settlement offer that was created by the prosecutor on March 14th regarding an agreement that was reached on March 13th. In the settlement offer it indicates the defendant would plead to counts 1, 3, 4, and 11, further that there would be a joint recommendation for a total sentence of 15 in and 10 out.

Did you receive that settlement offer?

A. I have to defer to the documentation on that. So I can't dispute it, I can't confirm it either way from my own memory.

Q. In that settlement offer did you -- well, in the settlement offer does it provide any details about a sentence adjustment?

A. I have to defer to the documentation.

Q. Did you have a chance to look at that settlement offer?

A. I did.

Q. Do you have the capability of looking at it right now?

A. I'm looking for it now, yes.

MR. SIMONO: Mr. O'Connell, can you describe for the record just so we have a clean record as to what that document looks like seeing you don't have it marked as an exhibit.

MR. O'CONNELL: Sure. It's Exhibit A.

THE COURT: It's part of Exhibit A, about halfway down, a little past halfway down.

MR. SIMONO: Okay. I got it. Thank you.

BY MR. O'CONNELL: {Cont'd.}

Q. Is there any -- is there any -- in that offer is there any -- are there any details about a sentence adjustment as part of the offer?

A. I have to defer to the documentation on that.

Q. I mean, do you have the capability of reading it?

A. I do, but on my computer screen it's in this light blue font that I can barely make out.

Q. Okay.

A. If you read it to me, I can acknowledge that -- what you're telling me it says.

Q. No, that's fine. It is part of the -- it's part of the record.

A. Okay.

Q. Now as for the plea questionnaire, you did get a copy of the plea questionnaire via email from my office?

A. Yes. I'm looking at that now.

Q. In the plea questionnaire it indicates it was filled out on March 19, 2018.

Is that --

A. Yes.
Q. Is that, in fact, the date it was reviewed with the defendant?
A. I'd have to defer to the questionnaire on that.
I do remember that at the time of the plea -- the plea hearing was on one date and the sentence hearing was on another date, and I do remember that we spent some time going over the plea --
Q. Do you recall whether --
A. -- because I distinct--
Q. Do you recall whether you -- whether the plea questionnaire was completed in the morning before the plea hearing?
A. Yes, that's what I'm starting to explain here, is I -- I remember that because we got to the courtroom late because we spent time on this and the judge was angry at me for being late.
Q. In the plea questionnaire it indicates the parties --
Let me tell you the page number.
On Page 4 of the plea questionnaire it indicates the parties request that the court -- as a part of the plea agreement the parties request that the court find the defendant eligible for sentence adjustment on each of the counts.

Now did you type that up or was that something the prosecutor created and provided to you?

A. I think I typed that up.

Q. I also note on the plea questionnaire it also appears to indicate the counts the defendant would plead to would now be counts 4, 7, 9, and 11, rather than the counts 1, 3, 4, and 11 as provided in that March 14th offer.

Am I reading that --

THE COURT: Your screen froze again, Mr. O'Connell, for several seconds, so could you repeat that question?

MR. O'CONNELL: Sure.

BY MR. O'CONNELL: {Cont'd.}

Q. I noticed in the plea questionnaire it also appears to indicate the counts the defendant would plead to now would be 4, 7, 9, and 11 rather than counts 1, 3, 4, and 11 as provided in the March 14 offer.

Am I reading that -- am I reading that plea questionnaire correctly?

A. If you're looking at Page 1, that's how it appears, yes.

And then on Page 3 though it's pretty messy. It looks like last minute. And I notice that there's initials under every modification with Mr. Christenson's

initials.
Q. Okay. At the plea hearing according to the transcript the prosecutor indicated he would be joining the defendant in asking the court to find the defendant eligible for sentence adjustment. Was that also, in fact, the plea agreement?
A. I believe so, yes.
Q. I also filed Exhibit B which is an SPD appellate questionnaire. Did you get a copy of that?
A. Yes.
Q. In the bottom it indicates the deal was 15 in and 10 out with the possibility of sentence adjustment.
A. Well, it says with -- with the possibility of sentence adjustment when he completed 75 percent of his sentence.
Q. Yes. Thank you.
Now did you fill that out?
A. Yes, I did.
Q. Now I want to try to fill the gaps between March 13 and March 19.
As we just discussed, the March 13 plea deal indicates the defendant would plead to counts 1, 3, 4, 11, but the ultimate -- or the final deal was for the defendant to plead to counts 4, 7, 9, and 11. Further, the 3/13 deal doesn't discuss sentence adjustment but

the final deal did.
A. What's your question?
MR. SIMONO: You froze again.
BY MR. O'CONNELL: {Cont'd.}
Q. I want you to try to fill in the --
(Court reporter requested clarification.)
THE COURT: You got to start over there. You summarized the difference between the two deals but then we -- your camera froze again. Sorry.
BY MR. O'CONNELL: {Cont'd.}
Q. In our motion for new trial the defendant indicates that you, him, and the prosecutor met on March 16. Do you believe you met with the prosecutor and the defendant on March 16?
A. It's possible. I have no independent memory of it. I have to defer to any other evidence on that subject.
Q. Do you have any memory of whether you met with the prosecutor and the defendant between March 13 and March 19 other than the -- other than the conversation -- or other than what we've discussed so far?
A. Not other than what we've already discussed, no. We did meet one time, possibly more.
Q. Do you recall having any discussions with the

prosecutor regarding amending the counts from counts 1, 3 to counts 4, 7, 9, and 11?
A. No, I don't. I see that it's clear in the documentation that there were amendments, but I don't have any independent memory of -- of it.
Q. Do you recall if you have any discussions with the defendant between those dates regarding amending those counts but with the defendant?
A. No, I don't have any independent memory of it.
Q. Did you have any dis-- do you recall having any discussions with the prosecutor between, again, March 13 and March 19 regarding sentence adjustment?
A. No. As I said, I don't have any independent memory of that.
Q. And what about any discussions with the defendant between those dates regarding sentence adjustment?
A. I can't say that either. I don't remember.

MR. O'CONNELL: Your Honor, I don't have any further questions.

THE COURT: Any questions, Mr. Simono?

MR. SIMONO: I do, Judge, just briefly. Hopefully briefly.

C R O S S - E X A M I N A T I O N

BY MR. SIMONO:
Q. Mr. Morgan, can you hear me okay? This is Chuck

Simono.
A. Yes.
Q. Okay. Just to talk about the plea questionnaire that you guys filled out.
To clarify the record --
A. Sure.
Q. -- you would agree that there's some handwritten modifications on what would be Page 2. It looks like something that you would have typed up; correct?
A. I prepared the plea questionnaire. Everything I'm looking at is familiar to me as how I do it, my handwriting and so forth. Umm . . .
Q. Okay. And that's --
Oh. I'm sorry. Please continue.
A. And you say Page 2, but I'm not sure what you mean by that. That looks like it's Page 1. And then there's Page 2 with the defendant's statement that's mostly typewritten. But form --
Q. I misspoke. I misspoke. Page 3.
A. Page 3 is where I'm summarizing the plea agreement as I understand it and presented it to Mr. Christenson.
Q. Correct.
And you would agree that there's -- that's where the charges of -- that Mr. O'Connell is talking about are different from the original discussion that was

listed being counts 1, 3, 4, and 11.
A. Right.
It's also on Page 1. If you'll notice, just a quick clearing note, that the original count numbers are scratched out and renumbered.
Q. Right.
And just to clarify, that wasn't a misunderstanding that's of count.
Would you look at Page 4 of your plea questionnaire?
A. Yes.
Q. And what, if anything, do you see on Page 4 regarding the original counts that were going to be pled to?
A. That looks like what I wrote up as my understanding at the time of writing that up.
Q. Okay. And do you recall where we met -- when I say we, being yourself, your client, and me, the D.A. -- when we discussed possible settlement? Do you know what location we were at?
A. Yes. We were in the jail in a -- in a meeting room in the jail.
Q. Like a conference room. Would you agree?
A. Right.
Q. Okay. And the -- nobody else was present for that

meeting, just the three of us; correct?
A. Correct.
Q. Okay. Do you recall your concern with regards to your client's sentence in connection with getting earned release?
A. Well, when you say earned release, I'm thinking of a different program, not the sentence adjustment statute.
Q. Yeah, I meant sentence adjustment. Excuse me.
A. Okay.
Q. Do you remember your concern that you presented to me with regards to your client getting sentence adjustment?
A. No, I don't. I have to defer to what I wrote on the plea questionnaire where it's very clear that that was a consideration that was presented to Mr. Christenson.
Q. Okay. Do you remember wanting your client to only have to serve approximately ten years?
A. Yes.
Q. And do you remember having a possible calculation in your mind at least that if he got sentence adjustment with, say, 12 or 13 or 14 years he would end up doing only so much if he got sentence adjustment? Do you remember presenting something like that to me?

A. I do vaguely remember that that was a topic of consideration.
Q. Do you remember my response to you on that -- that notion?
A. Yes. I think that you spoke from your experience as a -- as prosecutor up there with these judges and what you thought was realistic and what wasn't in that kind of case.
Q. Well, let me see if I can't jog your memory a little bit. I think you might be referring to something else we discussed with that -- that response.
Do you remember me stating something that you -- you can't negotiate or rely on, something to that effect, because it's not guaranteed?
A. I don't know, but that's something I would have understood.
Q. Do you remember --
A. I'd really be familiar with the sentence adjustment statute.
Q. Do you remember me stating directly to you that you need to educate your client on the fact that in ten years or whenever we would get to sentencing that we don't know who the district attorney or reviewing prosecutor would be or the judge and that we can't bind people to that?

A. I don't have an independent memory of -- of that, no.
Q. What do you remember about that meeting?
A. Well, I remember that we -- we all sat down. You spoke very frankly from your perspective. That was important for Mr. Christenson to hear. Mr. Christenson had his goals in mind and I wasn't -- you know, I'm not inside his mind, I'm just hearing what he's telling me, and he was struggling with what to -- which way to go and what decision to make.
Q. Do you remember us discussing presentence investigations?
A. Yes.
Q. Do you think maybe your recollection as to my reference as to what I saw other judges doing in the area related to presentence investigations, on who would order them and who would not?
A. I'm pretty much sure that we all understood there would be a presentence investigation and so that was something that we certainly had to expect.
Q. When I recited the plea to the Court on -- just give me one moment -- I believe it was March 19th or thereabouts did you take issue with anything that I recited to the Court?
A. I'd have to defer to the transcript on that. I

have not reviewed the transcript. I haven't been sent a copy of that.

Q. Okay. If you would have had an objection, would you agree that you would have done so and clarified it?

A. Yes.

Q. Okay. Do you recall if your client objected to anything that was recited to the Court?

A. I have to defer to the transcript on that.

Q. On the day of actual sentencing --

One moment here. Let me get to my document.

On the day of sentencing Mr. Christenson -- which I'm just pulling up that transcript now. Prior to but after hearing -- after getting all the witnesses but prior to sentencing did you make any further objections or clarifications to the Court as to what the actual plea agreement is?

A. I have to defer to the transcript on -- on that.

Q. Do you know if your client objected to the plea agreement as it was jointly recommended?

A. I have no independent memory of him objecting at the time and I have to -- if he did it on the record, I certainly defer to the transcript on that.

Q. Okay. Well, let's talk a little bit about the plea agreement again and your review of the plea questionnaire with your client.

Would you agree that you had been discussing the matter with your client prior to that plea hearing?
A. Yes.
Q. And by discussing with your client would that include possible options of -- of sentences and what to plead to and the ramifications for the same?
A. Yes.
Q. In those discussions did you explain to your client that the judge is not bound by what either party recommends?
A. I have no independent memory of that one way or the other.
Q. Is that part of your --
A. I can say that I'm familiar with these statutes and I would have advised him according to my understanding.
Q. Okay. In your -- is it your understanding that at sentencing a judge is not required to follow what either party recommends and can go higher or lower?
A. That's right.
Q. And do you normally --
A. And that's said --
Q. -- explain --
A. That's said in the plea questionnaire itself. That's expressly said.
Q. Okay. And you reviewed that questionnaire with

your client?
A. Yes.
Q. Line by line?
A. Pretty close, yeah.
Q. Do you recall --
A. (Unintelligible.)
(Court Reporter requested clarification.)
BY MR. SIMINO: (Cont'd.)
Q. Do you remember --
Go ahead, Mr. Morgan.
A. Each -- each section, each topic that the questionnaire lists, we went through it each item.
Q. Do you remember at our meeting at the jail where the three of us once again were still meeting -- the three of us being your client, yourself, and me -- where I repeatedly said you need to remind your client that the judge is not bound to anything we recommend, jointly or otherwise?
A. I do not remember you repeatedly saying that.
Q. Do you remember me saying it even once?
A. I don't know. I wouldn't object if you claimed that you did say it once or more times, but I don't remember one way or the other.
MR. SIMINO: Okay. I have no further

questions at this time, Judge.

THE COURT: Any redirect, Mr. O'Connell?

MR. O'CONNELL: Just a couple follow up.

REDIRECT EXAMINATION

BY MR. O'CONNELL:

Q. Attorney Morgan, you had indicated that you have a -- that you understand how sentence adjustment works. Is it your understanding that -- that sentence adjustment, is that something where the defendant would be guaranteed to get out or is that something where it would be a possibility that the defendant would get out?

A. Possibility.

Q. Okay. And then what about 75 versus 85 percent? Was it your understanding that the defendant would have the possibility of getting out after 75 percent of doing his time or 85 percent of his time?

A. I understand that it's 85 percent if it's above I think it's a Class F felony in seriousness. And I believe that I would have discussed that with the defendant, but I really have no independent memory of it.

And I can see in the documentation that it is specified by me when I filled out the SPD questionnaire.

Seventy-five percent was what he apparently felt was a surprise to him or he was thinking 75 percent when it turned out not to be and . . . But I have no independent memory of it. You know, I would expect that his memory might be better than mine on that because this was a bigger part of his life than mine. It's just one case among many for me. You know, I certainly take it serious, but I don't have a specific memory the way he might have.

Q. Okay. I just want to follow up with that.

These counts -- the more serious counts -- at the time -- I know you had just indicated that -- and you're under the impression that the defendant would have to serve 85 percent of his time before he would have the possibility of sentence adjustment. Did you believe that at the time you filled out this SPD appellate questionnaire?

MR. SIMONO: Objection. How is that relevant? Regardless of what Mr. Morgan thinks, it comes down to what the client thought --

MR. O'CONNELL: Sure.

MR. SIMONO: -- or what he -- what he rec--

MR. O'CONNELL: I think that's --

MR. SIMONO: -- or what he recommended

to his client.

THE WITNESS: Well, I think that's what the SPD questionnaire says, is that he was complaining that it was his understanding that he could get done in 75 percent of his -- approx-- and it's -- the wording that I'm reading on there is the possibility of sentence adjustment. So there's the possibility when he completed 75 percent of his sentence. So I'm writing that up as what I at the time believed his issue was that he told me when he asked to appeal. But I don't have any independent memory of it. I have to defer to that document.

BY MR. O'CONNELL: (Cont'd.)

Q. Okay. Do you have any independent memory of what your understanding was at the time you discussed sentence adjustment with the defendant before he entered his guilty plea?

A. Can you repeat that?

Q. Sure.

Do you have an independent memory of what your understanding was the defendant would have to serve -- what percentage of the time he would have to serve before he would be released?

And I'm specifically referring to during the time period when you discussed this with the defendant before

he entered his guilty plea.

A. The short answer would be, no, I don't have an independent memory. At the same time my own understanding of the statute I'm real clear on. But, you know, there's a possible gap between what I understood and what he understood. Maybe it just wasn't getting communicated clearly enough.

MR. O'CONNELL: Okay. I don't have any further questions.

THE COURT: Any follow up, Mr. Simono?

MR. SIMONO: No, Your Honor.

THE COURT: Okay. Do we need Mr. Morgan any longer then?

MR. O'CONNELL: I don't need him.

MR. SIMONO: Not from the State, no.

THE COURT: Okay. Mr. Morgan, you can leave the meeting. Thank you for your time, sir.

MR. MORGAN: Thank you, Your Honor. Bye.

(At this time the audio connection with Mr. Morgan was concluded.)

THE COURT: Okay. Any other witnesses, Mr. O'Connell?

MR. O'CONNELL: Your Honor, I'd like to call the defendant, Matthew Christenson.

THE COURT: All right. Let me unmute him here.

MR. O'CONNELL: Have you -- Mr. -- Okay.

THE COURT: I got him.

Mr. Christenson, can you hear me? This is Judge O'Melia.

MR. CHRISTENSON: Yes, Your Honor.

THE COURT: All right. You've been called as a witness.

Raise your right hand.

MATTHEW CHRISTENSON,

called as a witness herein, after having been first duly sworn, was examined and testified as follows:

THE WITNESS: Yes, Your Honor.

THE COURT: All right.

D I R E C T E X A M I N A T I O N

BY MR. O'CONNELL:

Q. Mr. Christenson, you heard your previous attorney testify; is that correct?

A. Yes.

Q. Now during counsel's testimony it was discussed that there were emails between your counsel and the prosecutor that everyone met on March 13.

Do you agree you met on March 13, 2018?

A. Yes. Yes.

Q. And during counsel's testimony it was discussed the State created a document that discussed the terms of an agreement that was reached on March 13th, 2018.

In that document it indicates you agreed to enter pleas to counts 1, 3, 4, and 11, and it also does not mention anything with sentence adjustment.

Was that the terms of the deal that you had understood -- you understood on March 13?

A. No.

On March 13th -- on the 12th I met with Mr. Morgan, and he said he was going to email Mr. Simono for a -- a plea deal because he said that he never sent anything. And so Mr. Morgan sent a plea of five years in and five years out, and Mr. -- Mr. Simono sent another offer back and said that we should just meet. So we met on the 13th in the Forest County -- in -- it was -- we met in Forest County sheriff's -- in their interrogation room where there was video and audio of the -- of the room.

On the 13th first Mr. Morgan told Simono ten years. Mr. Simono countered and said, no, I would like 15 years. So then what happened was they were then -- they talked about on the back side. So they were talking about how much probation I would have on the thing. So then they -- they -- they kept negotiating about the

time in and time out.

And then at one point Mr. Simono suggested a cap, that they both have a cap to argue, and then Mr. Morgan said, no, we don't want a cap because judges don't like to go on -- like to not follow plea deals on cap. Mr. Morgan told me that -- that deals that are -- are jointly are more -- more to get agreed upon. Mr. Simono and Mr. Morgan told me that if we get a joint recommendation that the judge should go with it. So once they agreed not to have a cap on the -- so they went 15 years with so much out, with 10 out.

And then they start talking the charges. And Mr. Sim-- Mr. Morgan told me that anything below a C or a C is 25 years -- 25 percent off your -- your sentence modification. And per the -- the -- the deal that was getting hashed back and forth about amending the charges, I asked Mr. Simono -- because Mr. Simono said why do you want these charges to get amended? And I told him that Mr. Morgan told me that if I can get them amended that I could get 25 percent off my sentence. And I asked him. I said are these the charges I could get 25 percent off my sentence? He said if Mr. Morgan said that that is so, then it's so because Mr. Morgan would know the charges better than he would. So then Mr. Morgan and Mr. Simono figured out 15 years with the

25 percent off with the time I had in county jail. It was like 10 years and 3 months.

So they -- they -- they -- they -- they were finishing up the plea deal and part -- Mr. -- Mr. Morgan said part of the plea deal he wanted the -- the -- Mr. Simono to go on record and approve the -- the -- the sentence modification because he said that he -- he had cases that if the D.A. did not approve it per the plea deal, then they could deny it later on, but he said if Mr. -- Mr. Morgan said if he got Mr. Simono to agree to it in the plea deal, that they could not take it -- take it away. All I had to do was behave in prison and I would get my sentence modification.

And so they figured out -- this out and -- and the charges that were gonna get reduced to the point where I could receive 25 percent off my sentence. And -- and that's what -- when we left Mr. Simono said that I'm going to -- he said that he's going to get all the paperwork wrote up and sent to the judge to get us in court, and he said he was going to check on it because we -- he said he was going to check on the charges to make sure that I could get my 25 percent off my sentence modification.

Mr. Morgan told me that no matter what happens at the -- at the -- at the -- at sentencing, no matter what

happens that I still would get my 25 percent off my -- my sentence due to the -- the -- the amended, reduced charges. So that's what I took, that no matter what happened at sentencing, that I still would be able to get the 25 percent off because Mr. Simono reduced the charges.

So then on the plea hearing day I come up to the courtroom. Mr. Morgan -- between that Monday Mr. Morgan came and seen me on the Friday. Mr. Morgan came to see me because he had -- he was going to see another defendant at the county jail, so he just checked on me because -- because he was there.

He -- he -- he affirmed me that -- to stay -- stay with the deal, because I said I didn't know if I really wanted to take the deal, that I might want to go to trial, and he said just do -- his best opinion is just to take the deal because he don't feel we could win at trial. So he said take the deal. And he was worried about making the judge mad so -- because we were talking about taking my plea back. He's like, well, you don't want to make the judge mad, because then judge is going to retaliate at sentencing, so he said just stay with the deal.

Because then -- because part of the deal was on -- on Tuesday was that Mr. Simono would dismiss any charges

that he would want -- that Mr. Morgan would want and we could plead to anything. So I told Mr. Morgan that we should have all the charges dismissed except for four, and he said, no, let's not do that that way because the judge already knows they're there. So then we take them away, it's not going to matter.

So that's the reason why we didn't ask for anything to get dismissed, because Mr. Morgan said that it doesn't matter, he's already seen them at this time. He told me that -- he told me on Friday when he seen me, he said, don't worry about it. It's locked in, that -- that the judge per -- the judge goes with plea deals because he said that he don't want to have all these jury trials and clog the courts up. That's why the judge will go with the plea deal, because he said it's a joint recommendation. He's like that's why we got a joint recommendation is so he will go with the plea deal. He said don't worry, it's locked in. So -- and then he was going -- before he left he's like you're doing the right thing. You know, it's only ten years. It's ten years versus life he says. So I'm like okay.

On the Monday of the court hearing I get taken up to the courtroom and Mr. Morgan and Mr. Simono are arguing at the table. They're arguing and I see Mr. Morgan rip the top paper of the packet off

Mr. Simono's plea deal and he said we do not agree to any of this stuff. And so I don't even get to sit down at the table. Mr. Morgan says I got to take you back in the back room.

So we go in the back room and he's -- he's arguing and he's angry and saying, well, how -- how -- not -- how -- how stupid Mr. Simono is with the paperwork and he -- he has all -- he has every -- all messed up, that it's not the right -- that -- that not one thing on the -- on the plea deal is right. So he -- he looks at it -- he looks at his paper and he says this ain't right either. He's like this ain't right either.

So he calls Mr. Simono into the back room and then they -- they -- they -- they go back over the plea deal and they -- they -- they -- they're confused about the thing. And -- and Mr. Simono told us in the back that he has his assistant -- that he called his assistant in the D.A.'s office to bring up new paperwork that's amended to the new charges. So Mr. -- Mr. Morgan said about the 15 in, 10 out and that I would still get my 25 percent off and that he still wanted the D.A. to tell him he agreed with the -- with the sentence modification.

And Mr. Simono told me that -- well, at the plea deal he told me that he had never denied one sentence

modification. And he told me that he would only deny one in a -- in a Mole Lake stabbing because he was a monster. So he said he's never denied sentence modification. So when he tells me that I believe -- and he's going on record to say that he -- he's agreeing with it and that I'm supposed to get my 25 percent off. That's what Mr. Sim-- Mr. Morgan told me, that that -- that can't be taken away no matter what, that -- that the charges will bring me 25 percent off.

So then he -- so he's scribbling on his paperwork and he's pointing, see like initial here, initial there, initial here, initial there. And I'm still sitting there. I was like I don't think I should do this, and he's like, well, the judge is waiting, the judge is -- he said the judge is getting mad. You got to -- and then he tells me -- he's like ten years or life, ten years or life. He's like you got to decide. He's like your decision is based on doing ten years or getting life. I said what would you do? So then he's like, well, you got to make up your mind. I was like, well, you're my attorney, you should help me. He's like, well, take the deal. So then I took the deal.

So all that happened. And then on record Mr. Simono said that he -- he approved the -- the sentence modification per the plea deal. And then when

we came back, sat down, Mr. Morgan said just agree with everything that the judge has to say, because if you don't agree with what the judge says, he's going to kick your plea deal out and he won't take it and then we got to go to trial. So that's the reason why I agreed with everything per the plea deal, is because Mr. Morgan told me to. If I didn't, the judge would be -- the judge would kick out the plea deal.

And then when -- when Mr. -- Mr. Simino said that he had an amended criminal complaint coming up with the new charges that -- that he was going to bring up -- we see -- he didn't get -- she didn't get it until after the cor-- the -- the judge closed the court hearing. Once the court was closed I seen Mr. Simino's assistant bring up the new charges and I said what -- what's that right there? What -- what is -- because he was signing it. I was like what is Mr. Simono signing over there? I was like I -- I want a copy. And Mr. Simino --

THE COURT: He's been talking for --

THE WITNESS: (Unintelligible.)

THE COURT: Stop.

He's been talking for seven-and-a-half minutes basically --

THE WITNESS: Yeah.

THE COURT: -- and I don't recall what

the question is.

Can you try and frame this to dates, because now he's referring to he, him, on that day. We have to have some clarity here and it's -- I think we've kind of lost it.

MR. O'CONNELL: Sure. I'll ask some follow-ups.

BY MR. O'CONNELL: (Cont'd.)

Q. Mr. Christenson, you had indicated -- regarding the deal you reached you had indicated that the -- your defense counsel had indicated to you that the deal was locked in?

A. Yes.

Q. Okay.

A. He said it was locked in because we both agreed on it.

Q. Okay. Now did he provide you with notice that your sentence could get any larger than -- that the judge could go any greater than what the -- what the recommendation was?

A. He said he -- he could but he won't. He said once we both agreed that the judge will agree with it.

Q. Just to clarify, you said he could but he won't. So you're --

A. Right.

Q. Are you saying he -- the judge could go over the joint recommendation or the judge could not go over the joint recommendation?
A. He said that -- he said he could but he said the judge won't because we had a joint recommendation.
Q. Okay. So, in other words, he likely would not go over but he could do it?
A. He -- she (sic) said it was a possibility but it won't happen.
Q. Okay. Okay. Now regarding this sentence adjustment, that -- did your attorney indicate to you that it was -- after you served 75 percent of your time that it was possible you would get out or is that something you were guaranteed to get out as long as you behaved yourself while you were in prison?
A. On -- on the day of the plea deal Mr. Morgan wanted the charges reduced so I could get it and Mr. -- I asked Mr. Simino and Mr. Simino said -- Mr. Simino said that out of all the people in his case, nobody's been -- he said nobody has been denied. He said that in this whole thing that he's gonna -- he -- he will deny one person when they come up, but he said he's never denied anybody that. Everybody's got it. All you got to do is behave.
Q. Again, I'm just looking for more clarity. Are you saying that the -- that -- are you saying that it's

highly likely or are you saying it's guaranteed that --
A. Mr. -- Mr. Morgan said it's a guarantee as long as you behave.
Q. And you had indicated it was after you served 75 percent of your time?
A. Yes. Yes. Because he said part of the plea deal is to get the charges reduced to the point where I would get 25 percent off my sentence. That was part of the plea deal, to have amended charges.

MR. O'CONNELL: Yeah, I don't have any further questions.

THE COURT: Mr. Simino.

MR. SIMONO: Thank you, Judge.

C R O S S - E X A M I N A T I O N

BY MR. SIMONO:
Q. Mr. Christenson, I got a few pages of notes here so forgive me if I get repetitive. I will try not to.
First, do you have any formal training in the law?
A. No.
Q. How well do you understand legal terminology?
A. Not very.
Q. During that meeting --
A. This is -- sorry. This is my first criminal case ever. This is my first thing.
Q. Okay.

During the meeting at the sheriff's department conference room would you agree that there were discussions between me and your attorney about many different types of possible settlements?
A. Yes.
Q. Did you hear a lot of different legal terms being shared between your attorney and I?
A. Yes.
Q. Did you understand what we were saying at the time?
A. Both you and attorney was try-- yes, trying to explain stuff sometimes.
Q. Do you remember when questions were asked of me I would always answer them to your attorney?
A. No. You answered questions to me, too.
Q. Well, do you remember me telling your attorney repeatedly that he needs to explain to his client what this means?
A. No. You didn't say that any times.
Q. Do you remember me saying repeatedly that the judge isn't bound by anything that's recommended?
A. You didn't say that at all. You told me that it was a joint recommendation, the judge will go for it.
Q. You seem to have a great memory for stuff you want to remember but not other stuff, Mr. Christenson.
When it comes to the sentence adjustment, I

indicated I would not object to it, correct, that you would be eligible for it.

A. Per the plea deal Mr. Morgan wanted you to say it on record and --

Q. That's not what I'm asking you.

What do you remember me saying about it? Did I specifically say I would not object to it, for the Court to consider it?

A. No. You said you agreed to it. You said that part -- Mr. Morgan said -- after you said the years, he said that he wanted the charges reduced to a point where I could get the 25 percent off and then you would agree to the --

Q. Mr. Christenson --

A. -- plea.

Q. -- you've answered my question. Thank you.

Do you remember discussions at the meeting where part of the final plea agreement left it open for you to decide whether you wanted the incest charges dismissed and read in or dismissed outright and you'd let me know at the plea hearing?

A. That was up to what Mr. Morgan said would be best.

Q. But do you remember that being discussed and agreed to at that meeting?

A. No.

Q. Do you remember it being part of the plea offer that was typed up by me?
A. I thought you -- I thought like -- like some of them you wanted in and some of them you didn't want in.
Q. I'm asking you what you remember.
A. No, I don't remember that.
Q. Do you remember reading the plea -- plea offer -- the settlement offer that I sent your attorney?
A. Mr. Morgan never showed it to me. The only one he showed me was the one that he had that was scribbled on. I never got to see your paperwork.
Q. Okay. Do you remember me telling you I wanted you to enter a plea one count each child that was in -- that was affected?
A. Yes.
Q. Okay. We agree on something.
At the plea hearing did you object to any of the statements I made regarding the plea when I advised the judge what the plea would be?
A. Mr. Morgan told me I could not object. I wasn't allowed to say anything. If I had to object, Mr. Morgan had to do it.
Q. Do you remember your attorney objecting?
A. I tried to but he -- he -- he said just let it be.
Q. Hmm.

A. Because he said he didn't want to make the judge more angry than he was.
Q. You knew that day you could still go to trial; right?
A. What's that?
Q. You knew the day of the plea you could still go to trial; correct?
A. No. I thought it was locked in.
Q. Okay. You just testified before answering questions from Mr. O'Connell that you were telling Mr. Morgan over the weekend you still wanted to go to trial.
A. Yes.
Q. And you knew you could still go to trial over the weekend.
A. Mr. Morgan said that would not be a good idea.
Q. Okay. So he said it wouldn't be a good idea, but you knew you still could go to trial; correct?
A. And -- and -- and when you sent the letter to the judge asking for --
Q. Mr. Christenson, I'm asking you a question. You're not answering it.
A. Yes.
Q. Yes what?
A. Yes. Yes, I could go to trial.

Q. Thank you.

Do you remember the plea questionnaire that you filled out?

A. Not really.

Q. Do you remember reviewing it with your attorney?

A. He just told me to say yes. He showed me where to say yes and all that.

Q. Do you remember --

A. He said -- he said we had to --

What's that?

Q. Do you remember him advising you what the possible maximum penalty could be?

A. When Mr. -- Mr. -- judge -- when Your Honor said yes, then that's what he said.

Q. Okay. Back to the plea ques-- plea questionnaire.

A. Yes.

Q. Let me repeat --

A. (Unintelligible.)

Q. Mr. Christenson, hold on and let me ask the question before you answer.

Your attorney said he reviewed that with you and that there was a section on here regarding the maximum penalty. Do you remember him reviewing that with you?

A. Yes.

Q. Okay. Do you remember him reading the whole two

sentences to you?
A. No. He -- he said that this was a formality for a plea deal, that we just had to agree to everything.
Q. Did he -- do you remember him telling you that the judge is not bound to any plea agreement?
A. He said that it was -- our plea deal was locked in because it was joint recommended.
Q. You just testified that it wasn't guaranteed but he was most likely going to go for it.
A. Yes.
Q. Okay. Do you remember the judge asking you at the time of your plea --
Let me find it here.
Do you have a copy of the sentencing transcript, Mr. Christenson?
A. I do not have any paperwork of anything.
Q. All right.
Do you remember the judge asking you if you were aware that he was not bound to any agreement and that he could go higher -- higher than what was being recommended?
A. Yes.
Q. And you agreed with that.
A. I -- I agreed with it per --
Q. You agreed that --

Let me rephrase the question because I didn't say it very well.

You agreed to proceed with a guilty plea knowing that.

A. Because Mr. Morgan said that's what I should do.

MR. SIMINO: Your Honor, I've got a few things. I take objection to what Mr. Christenson kind of rambled, testified to. I don't know if I can make a statement afterwards or if you want to have anyone (unintelligible) --

(Court reporter requested clarification.)

MR. SIMONO: Yeah. Mr. Christenson's moving his hands by the mic so there's background noise.

I don't know if anyone wants to --

THE COURT: I've muted him so . . .

MR. SIMONO: I don't know if anyone wants to ask any questions. I do have a few statements I would like to make, what I take objection to some of the things he said. I totally disagree with some of the things he said. So if the Court would allow me just a brief statement. I would like to see if I could get a little direction from the Court on how you want to proceed.

THE COURT: All right. Mr. McConnell (sic), do you have any redirect of your client? Mr. O'Connell rather.

MR. SIMONO: He's frozen again.

THE COURT: Yep.

MR. O'CONNELL: I do not have any -- any additional questions for Mr. Christenson.

THE COURT: And did you have any other witnesses, Mr. O'Connell?

MR. O'CONNELL: I do not.

THE COURT: And this hearing kind of morphed into a hearing where he says he didn't know the judge could or would potentially go above an agreement, whereas it started out as he simply -- there was a misunderstanding apparently about the 75 percent or 85 percent.

So what -- I guess what -- what is the specific claim, ineffective assistance of counsel or is it a misunderstanding of the law as explained to him? So if you want to narrow that down so I even know what to deal with because there's -- if it's ineffective, then there's a different obviously criteria that I have to pursue and . . . So I'll let you address that I guess before we get to Mr. Simono.

MR. SIMONO: He's frozen again, Judge.

THE COURT: I see that. And he'll probably snap out of it here in a sec.

MR. O'CONNELL: Okay. Yes, Your Honor. This would be brought as an ineffective assistance of counsel.

THE COURT: It is or is not? I'm sorry.

MR. O'CONNELL: I'm sorry. Yes, this would be brought as an ineffective assistance of counsel.

THE COURT: There's no reference in your motion to that so . . . But my recollection is on such hearings there's got to be -- it's two phased. One, there's got to be ineffectiveness, but then the second phase -- and I could be wrong on this. And I'll probably want some letter briefs on this down the road. But the second phase is prejudice. Where's the prejudice? The Court ultimately gave him 60 years in, and so the 75 percent on various consecutive sentences -- I'm not even sure how that would all work but . . . I guess if you want to address that.

MR. O'CONNELL: Your Honor, could I brief that to this court?

THE COURT: Okay.

See, I'm not sure I should allow you to brief it because we might not even have had to have a hearing. Because I know that before you have those hearings -- and I can't remember the name of the cases. I'm sure you two will remember the hearing. *Mahner* hearing. I have a right to even deny the need for a *Mahner* hearing because there's been no showing in the initial filings, and I said there is no reference in the initial filing here of any ineffective assistance of counsel. Now maybe that's what you were trying to allege, but there was no reference to it so . . . Again, I'm winging it here because I'm trying to figure out what actually is the issue but . . .

And, Mr. Simino, I will allow you at this point to put something on the record as to your recollections, not legal arguments at this point because I think I will take Mr. O'Connell's request for some letter briefs perhaps, nothing too formal, but just some -- something to narrow this examination down to specific issues. But I will allow you to put something on the record.

MR. SIMONO: I will make it very brief.

I do acknowledge that at the meeting at the sheriff's department in the conference room --

(Court reporter requested clarification.)

MR. SIMONO: I got closer so maybe that was the problem.

COURT REPORTER: It's better now. Thank you.

MR. SIMONO: Okay. I --

MR. O'CONNELL: Is this -- I'm sorry. Is this argument or is this testimony?

MR. SIMONO: It's just a statement.

THE COURT: Well, it's -- I'm going to hear something one way or the other but . . .

If it's just to discredit -- not discredit. If it's simply to disagree about locations and things like that, I guess I got to stick with the record here unless you want to go under oath but . . .

MR. SIMONO: Yeah. I mean, I don't really have a problem with going under oath either. I do take -- I guess with regards to things that were not remembered by Mr. Morgan and disagreed upon by Mr. Christenson I have a very specific

alternative memory, and then also some things referenced by Mr. Christenson the day of the plea in court I have a completely different memory.

THE COURT: All right.

MR. SIMONO: So however you would like to proceed.

THE COURT: I don't really want to put you under oath.

MR. SIMONO: Okay.

THE COURT: You'll probably want to have the assistant D.A. there representing you or something like that. It's highly irregular. And usually it's simply up to the -- it's what's in the defendant's mind basically and --

MR. SIMONO: All right.

THE COURT: -- what was told by his client during those usually confidential hearings.

The Court was not upset. I will state this without a doubt. The Court was not upset on the day of sentencing. I had no reason to be upset. It was the day of the plea --

MR. SIMINO: Um-hum. Right.

THE COURT: -- when I got there at some certain time and he was in the back room for about an hour and a half --

MR. SIMONO: Correct.

THE COURT: -- and never really gave me an explanation as to what was going on. I would have preferred him to come up the night before, things like that to go through those plea questionnaires on such a serious case.

So, yeah, I was irked about that, but obviously didn't really care after I came back for sentencing. That was not all that relevant. It wasn't relevant at all to the Court at that point, never was. I was just more irked at the use of time on that day of the plea.

All right. So, Mr. O'Connell, why don't you get something in in the next, I don't know, three weeks okay?

MR. O'CONNELL: That sounds good.

THE COURT: And then once that is received I'll give Mr. Simino three weeks.

But I'm just -- the motion was very limited and it really morphed into something expansive that may not have been necessary but . . .

So let me just put that on the record the dates here then. So you'll have something to me June 19th and then Mr. Simino gets something to

me on July 10th.

MR. SIMONO: Understood.

THE COURT: Okay. Anything further, Mr. O'Connell?

MR. O'CONNELL: Could I order the tran-- if I could order the transcript. We could probably both use it in our re-- in our briefs to the Court.

THE COURT: Okay. Well, that's going to change things in terms of you're not going to get the transcript right away.

We will go off the record.

(Off the record.)

THE COURT: Okay. We'll go back on the record.

The court reporter indicated probably Friday next week, a week from today. So I will ask that you -- once that transcript is filed you have three weeks from that date, and then once that is received from Mr. O'Connell, Mr. Simino will have three weeks from that date. So it'll be reflected on the record in the case filings here. So that will be the triggering even-- event rather.

Any objection to that, Mr. O'Connell?

MR. O'CONNELL: No, Your Honor.

THE COURT: Mr. Simino?

MR. SIMONO: None.

THE COURT: Okay. And I still have him on . . .

Okay. Mr. Christenson, if you have questions, you can reach out to your attorney.

And we are adjourned.

(At 3:13 p.m. the proceedings adjourned.)

* * *

STATE OF WISCONSIN)

)

ONEIDA COUNTY)

I, JEAN WOOD, RMR, CRR, do hereby certify that I have carefully compared the foregoing transcript with the stenograph notes taken by me at the time of the above-entitled action and find the same to be a full, true, and correct transcript of said notes containing all the testimony given and proceedings had in the above-entitled matter on the 29th day of May, 2020.

Jean Wood

Jean Wood, RMR, CRR

Dated this 5th day of June, 2020

Rhinelander, Wisconsin.

Simono, Charles

Good Morning Andrew,

I am touching base to see if we now things are shaping up for the final pretrial this Thursday. Please let me know if you wish to talk beforehand.

Thank you.

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

From: Simono, Charles
Sent: Monday, June 26, 2017 1:14 PM
To: Andrew M Morgan
Cc: Diane Murray; Matuszewski, Carissa; McKenzie, Colleen; Simono, Charles
Subject: RE: Matthew Christenson discovery

I am aware that he was arraigned on June 1st. I expect that it will be mailed this week.

Thank you.

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

From: Andrew M Morgan [redacted]
Sent: Monday, June 26, 2017 11:31 AM
To: Simono, Charles
Subject: Matthew Christenson discovery

Hello Mr. Simono,

I filed a demand for discovery dated on 6-6-17 and am still waiting to receive discovery from you. I'd like to get this moving. This is a double dip homicide case.

Thank you.
Andrew M. Morgan
SBN 1031078
(715) 432-6755
Wausau

From: Simono, Charles [[illegible]]
Sent: Friday, March 02, 2018 4:12 PM
To: Andrew M Morgan
Cc: Simono, Charles
Subject: RE: Matthew Christenson - defendant counter offer

Andrew

I appreciate your offer for possible settlement. As for the physical abuse and incest components of your settlement, I have no objections to those aspects as proposed by you should we reach an agreement on the other charges.

I have had ample experiences with numerous sexual assaults that include varying ages for suspect and victim. In most cases involving a suspect that is in their 20's and a victim that is 15 or younger the typical sentence is a minimum 6 years of incarceration. Given the current status between your client and his victims, I believe that a PSI would come back with no less than 12-15 years incarceration with a large extended supervision term to follow. As such, I cannot accept any offer that proposes only 5 years of incarceration.

I am in agreement with C felonies for a plea but am requiring one for each of his three daughters.

I look forward to hearing from you.

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

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From: Andrew M Morgan [[illegible]]
Sent: Thursday, March 01, 2018 7:08 AM
To: Simono, Charles
Subject: Matthew Christenson - defendant counter offer

Mr. Simono,

We have completed the main body of watching the discovery videos. Mr. Christenson instructs me to forward the following counter-offer:

He would plead to two Class C sex assaults, without enhancers, and to include incest counts. He would also plead to [illegible] of the physical abuse of child counts, no enhancers.

The parties would jointly recommend, without request for a presentence investigation, 5 in / 15 out concurrent on one of the class C sex assaults.

And 10 in / 10 out on the other imposed and stayed, with a lengthy probation period on that count.

Then on the physical abuse of child counts, the max on each, and all these to run concurrent.

Andrew M. Morgan
Attorney for Defendant
(715) 432-6755
Wausau

(715)478-3511

(715)478-3490 (facsimile)

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From: Andrew M Morgan [redacted]
Sent: Friday, March 09, 2018 7:35 AM
To: Simono, Charles
Subject: RE: Matthew Christenson - defendant counter offer

It is looking like I have one chance to visit Mr. Christenson between now and the FPTC. That's on the 13 next Tuesday afternoon 3-13-18.

It sounds like you have some interest in settling this case. If so that will be your only chance prior to my schedule.

Want I propose is that you meet with Mr. Christenson and I at the jail so you and he can take each client's measure directly and consider possibilities off-hand.

Sometimes when I go over to the prosecutor talks, not wanting to become a witness. I tend to stand

But I can assure you Mr. Christenson will be sworn on the merits—this will be strictly negotiation.

Also 904.10 says any negotiations stated in plea negotiations are inadmissible at trial so you don't have to be concerned about becoming a witness

Andrew

From: Simono, Charles [redacted]
Sent: Friday, March 02, 2018 4:12 PM
To: Andrew M Morgan
Cc: Simono, Charles
Subject: RE: Matthew Christenson - defendant counter offer

Andrew

I appreciate your offer for possible settlement. As for the physical abuse and incest components of your settlement I have no objections to those as stipulated should we reach an agreement on the other charges.

I have had ample experience with numerous sexual assaults that include varying ages for suspect and victim. In most cases involving a suspect that is 18 or younger the typical sentence is a minimum 5 years of incarceration. Given the current status between your client and his victims I cannot come back with no less than 12-15 years incarceration with a large extended supervision term to follow. As such I cannot accept any offer that proposes incarceration.

I am in agreement with Christenson for a plea but am requiring one for each of his three daughters.

I look forward to hearing from you.

Chuck Simono
Forest County District Attorney
200 East Madison Street
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From: Andrew M Morgan [redacted]
Sent: Thursday, March 01, 2018 7:08 AM
To: Simono, Charles
Subject: Matthew Christenson - defendant counter offer

Mr. Simono,

Subject: RE: Matthew Christenson - defendant counter offer

Simono, Charles

Sounds perfect. See you then.

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

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From: Andrew M Morgan [mailto:[illegible]]
Sent: Friday, March 09, 2018 11:01 AM
To: Simono, Charles
Subject: RE: Matthew Christenson - defendant counter offer

[illegible]

From: Simono, Charles [mailto:[illegible]]
Sent: Friday, March 09, 2018 10:33 AM
To: Andrew M Morgan
Subject: RE: Matthew Christenson - defendant counter offer

I will be happy to accompany you at a regular short settlement meeting. Just let me know the time.

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

This is a transmission from the Forest County District Attorney's Office and may contain information which is privileged, confidential, and protected by the attorney-client or attorney work product privileges. If you are not the addressee, note that any disclosure, copying, distribution, or use of the contents of this message is prohibited. If you received this transmission in error, please destroy it and notify us immediately at our telephone number (715)478-3511.**

From: Andrew M Morgan [mailto:[illegible]]
Sent: Friday, March 09, 2018 7:35 AM
To: Simono, Charles
Subject: RE: Matthew Christenson - defendant counter offer

[illegible]

Subject: RE: Christensen

Simono, Charles [illegible]

I will advise the court of your time needs

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon WI 54520
(715)478-3511
(715)478-3490 (facsimile)

From: Andrew M Morgan [mailto:[illegible]]
Sent: Tuesday, March 13, 2018 6:42 PM
To: Simono, Charles
Subject: RE: Christensen

We're presently scheduled for 9 am, and since I have to go through the plea questionnaire with him beforehand, it's probably not realistic to hope we can be ready any earlier

From: Simono, Charles [mailto:[illegible]]
Sent: Tuesday, March 13, 2018 4:35 PM
To: Andrew M Morgan
Subject: Christensen

[illegible]

I heard back from the judges office [illegible]

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520

(715)478-3511
(715)478-3490 (facsimile)

Joint REcommen

STATE OF WISCONSIN **CIRCUIT COURT** **FOREST COUNTY**

DA Case No.: 2017FO000173
Court Case No.: 2017CF000042

STATE OF WISCONSIN
Plaintiff,

vs.

MATTHEW J CHRISTENSON
DOB: 04/12/1984
Defendant.

JOINT SETTLEMENT RECOMMENDATION AS AGREED UPON ON MARCH 13, 2018

For Official Use

(this document must be attached to the defendant's waiver of rights plea questionnaire)

The State of Wisconsin is presenting the following Settlement Recommendation for your review. The offer is contingent pending the review and approval by any victim(s) and the defendant's compliance with the conditions that are subject to this offer. Consideration for this offer stems from the State's review of law enforcement reports, witness and victim statements, other evidence associated with this matter, and the defendant's criminal history.

THIS RECOMMENDATION IS SUBJECT TO THE FOLLOWING CONDITIONS:

1. The Defendant, by accepting this offer, specifically acknowledges the existence of a factual basis within the criminal complaint for the charges filed against him/her, the facts alleged and any prior convictions as set forth in the complaint which may support any repeater or enhancement allegations.

2. Acceptance of this offer must be demonstrated by completion of this document. Completion means that this document is signed by the defendant (and his/her attorney), the completed original being filed with the Clerk of Court and a copy with the District Attorney prior to the first scheduled pre-trial date. Lack of acceptance, any counteroffer, and/or any additional criminal activity shall result in the withdrawal of this offer without further notice.

3. The State reserves the right to present any evidence or argument to the Court that the Prosecutor deems necessary in support of the above recommendations and to advise the Court of information relevant to sentencing. This includes, but is not limited to, negative information about the defendant arising before or after the entry of the plea. The State further reserves the right to present the views or wishes of the victim to the Court even if such views or wishes are not consistent with the above recommendations.

4. This offer is contingent on the defendants criminal history being as represented on the date of this offer and upon the belief that the defendant has no pending criminal matters or newly incurred charges in any court except as identified by the defendant.

5. By accepting this offer, the defendant expressly waives any defenses based on double jeopardy, statute of limitations, suppression issues, pretrial rulings and jurisdiction. Additionally the defendant expressly waives the right to appeal or to seek post-conviction relief for all issues with the exception of ineffective assistance of counsel or sentencing errors.

6. ALL RECOMMENDATIONS FOR INCARCERATION SHALL BE CONSECUTIVE ALL OTHER CURRENT TERMS OF INCARCERATION ALREADY BEING SERVED BY THE DEFENDANT UNLESS OTHERWISE SPECIFIED IN WRITING BY BOTH PARTIES.

7. The defendant understands and agrees that if this case involves one or more victim(s) that said victims are not required to accept nor be in agreement with the proposed settlement contained within this document and further is aware and agrees that the State shall comply with their obligation to assure any victim(s) are fully aware of their rights as provided for under Wis. Stat. §950 et. al.

STATE OF WISCONSIN - VS - Matthew J Christenson

Count 1:Second Degree Sexual Assault
Plead : ☒ as alleged. ☐ as amended ☐ Dismissed ☐ Read-in for sentencing

☒ INCARCERATION See Below
☐ FINE $____
☒ RESTITUTION $TBD

☒ plus court costs, assessments and Surcharges
☒ See Below

Count 2:Sexual Assault of a Child Under 16 Years of Age
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 3:Sexual Assault of a Child Under 16 Years of Age
Plead : ☒ as alleged. ☐ as amended ☐ Dismissed ☐ Read-in for sentencing

☒ INCARCERATION See Below
☐ FINE $____
☒ RESTITUTION $TBD

☒ plus court costs, assessments and Surcharges
☒ See Below

Count 4:AMENDED Sexual Assault of a Child Under 16 Years of Age
Plead : ☒ as alleged. ☐ as amended ☐ Dismissed ☐ Read-in for sentencing

☒ INCARCERATION See Below
☐ FINE $____
☒ RESTITUTION $TBD

☒ plus court costs, assessments and Surcharges
☒ See Below

Count 5:Incest
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 6:First Degree Sexual Assault
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 7:Repeated Sexual Assault of a Child
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 8:Incest
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 9:Repeated Sexual Assault of a Child
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 10:Incest
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

STATE OF WISCONSIN - VS - Matthew J Christenson

Count 11:Physical Abuse of child
Plead : ☒ as alleged. ☐ as amended ☐ Dismissed ☐ Read-in for sentencing

☒ INCARCERATION see below
☒ FINE $____
☒ RESTITUTION STBD

☒ plus court costs, assessments and Surcharges

☒ See Below

Count 12:Physical Abuse of child
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 13:Physical Abuse of child
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

Count 14:Physical Abuse of child
Plead : ☐ as alleged. ☐ as amended ☒ Dismissed ☒ Read-in for sentencing

In regards to counts One, Three, Amended Four and Eleven, the defendant will enter a guilty or no-contest plea. Under counts One, Three and Four the joint recommendation will involve a twenty-five (25) year sentence to be bifurcated with fifteen (15) years incarceration and ten (10) years extended supervision. Count eleven, the joint recommendation will be for a three year six month sentence that will be concurrent to counts One, Three, and Four and shall be bifurcated by 18 months incarceration and 2 years extended supervision.

The read-in of all other charges is agreed upon with the exception that the defendant can advise the State at the time of the scheduled plea as to whether he chooses to NOT have counts Five, Eight and Ten (being all incest charges) read-in but rather dismissed outright.

Electronically Signed by Charles J. Simono
Charles J. Simono
Forest County District Attorney
State Bar No. 1030774

March 14, 2018
Date

The above listed settlement offer is fully understood, agreed upon and accepted.

_____
Defendant

_____
Date

_____
Andrew Morgan
Defense Attorney
State Bar No. 1031078

_____
Date

06/26/2017

Subject: RE: Christenser

Simono, Charles

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

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From: Andrew M Morgan [mailto:
Sent: Tuesday, March 13, 2018 6:42 PM
To: Simono, Charles
Subject: RE: Christenser

We're presently scheduled for 9 am, and since I have to go through the plea questionnaire with him beforehand, it's probably not realistic to hope we can be ready any earlier.

From: Simono, Charles [mailto:
Sent: Tuesday, March 13, 2018 4:35 PM
To: Andrew M Morgan
Subject: Christensen

I will get you the amended plea questionnaire

I have back from the judges office they will not [illegible] 9:45

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520

(715)478-3511
(715)478-3490 (facsimile)

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Subject: RE: Christensen

Simono, Charles [illegible]

I agree. I am merely relaying the message from the Judge.

Thanks

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

From: Andrew M Morgan [mailto:[illegible]]
Sent: Wednesday, March 14, 2018 6:29 PM
To: Simono, Charles
Subject: RE: Christensen

I'll be there as early as the jail will allow. [illegible]

However, I wouldn't think the court or the state wants [illegible] important paperwork

From: Simono, Charles [mailto:[illegible]]
Sent: Wednesday, March 14, 2018 11:31 AM
To: Andrew M Morgan
Subject: RE: Christensen

Judge is insisting on 8:45

Chuck Simono
Forest County District Attorney
200 East Madison Street
Crandon, WI 54520
(715)478-3511
(715)478-3490 (facsimile)

From: Andrew M Morgan [mailto:[illegible]]
Sent: Tuesday, March 13, 2018 6:42 PM
To: Simono, Charles
Subject: RE: Christensen

We're presently scheduled for 9 am [illegible]
It's probably not realistic to hope we can be ready at [illegible]

From: Simono, Charles [mailto:[illegible]]
Sent: Tuesday, March 13, 2018 4:35 PM
To: Andrew M Morgan
Subject: Christensen

I will get you the Amended [illegible] in the morning.

I heard back [illegible]

SPD APPELLATE QUESTIONNAIRE

If you have filed a notice of intent to pursue postconviction relief, your trial representation is not complete until you have:

1. Forwarded all transcripts obtained during the course of your trial representation and a date-stamped copy of the notice of intent to SPD Appellate Intake, P.O. Box 7862, Madison, WI 53707.
2. Requested any appropriate jail credit from the trial court. This is not the responsibility of appellate counsel.
3. In Misdemeanor cases, it is your obligation to discuss with your client a stay of any jail sentence pending appeal, including potential effects, and to proceed should your client choose and you feel there is appropriate basis to do so. If you have any questions about this, contact the First Assistant of your trial office.
4. Filled out this questionnaire and sent it to Appellate Intake.

Client's Name:	**Matthew J. Christenson**		
County:	Forest	Social Security No.	
Case No(s):	17-CF-42	SPD Case No(s):	17P-21-B-S00093
Attorney:	Andrew M. Morgan SBN 1031078	Office:	P.O. Box 1962, Wausau, WI 54402 (715) 432-6755
Sentence/Disposition Date:		Guilty/No-Contest/Other	

Jury Trial: None	Length of jury trial:	Was Jury Polled Individually:
Court Trial: None	Length of court trial:	

TRANSCRIPTS

Date	Nature of Proceeding	Court Reporter
None		

CONFLICTS

Codefendant/witness/informant	Represented By

Is there a stay of sentence pending appeal?	No
If not, why not?	Sentenced to lengthy prison term.
Is client on Huber/work release?	
Has a status hearing date been set?	
If so, when and where? (Specify date, time and court)	

Potential Appellate Issues
Matthew was charged with numerous sex assaults of three of his daughters and two of their friends, along with child abuse of his son. Total exposure 494 years. Recognizing that if he lost on more than a few such charges, he would likely get in effect a life sentence, he sought a plea bargain with a specific joint recommendation. This we obtained, which was to recommend a controlling sentence of 15 years in / 10 out, concurrent, with the possibility of sentence adjustment when he completed 75% of his sentence. Instead, Judge Patrick O'Melia (normally of Oneida County, substituting for Judge Stenz in this case) jumped the agreement, sentencing Matthew to what amounts to 60 years in / 15 out.

STATE OF WISCONSIN CIRCUIT COURT FOREST COUNTY

STATE OF WISCONSIN,

Plaintiff,

DEFENDANT'S BRIEF IN SUPPORT OF MOTION TO WITHDRAW PLEAS

-vs-

Case No. 17CF42

Matthew J. Christenson,

Defendant.

Case Law.

A defendant whom desires to withdraw his plea post sentencing must show by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. State ex rel. Warren v. Schwarz, 291 Wis.2d 615, 635, 579 N.W.2d 698 (1998). This can be accomplished by showing the plea was not entered knowingly, voluntarily, and intelligently. State v. Rodriguez, 221 Wis.2d 487, 492, 585 N.W.2d 701 (Ct. App. 1998).

In State v. Brown, the court encountered a plea withdrawal issue. In said case, the defendant was incorrectly informed by the prosecutor and his defense counsel that the crimes he was pleading to did not require sex registration. State v. Brown, 2004 WI App. 179, P13, 276 Wis.2d 559, 687 N.W.2d 543. This issue was of importance to the defendant. State v. Brown, 2004 WI App. 179 at P13. As a result, the reviewing court concluded that the defendant could not have entered his pleas knowingly and voluntarily, and it then permitted him to withdraw his pleas. State v. Brown, 2004 WI App. 179 at P14.

As for sentence adjustment, Wisconsin Statute 973.195 addresses such. If an individual is convicted of a Class C to E felony, said person can petition for early release once 85% of that person's sentence is served. On the other hand, if the person is convicted of a Class F to I felony, said person can petition for early release once 75% of that person's sentence is served. If the person properly petitions for early release, and there is no objection from the prosecutor (or victim in 948.02(2) cases), the court can grant said petition if said court believes it is appropriate.

Facts.

Before the postconviction motion hearing was held, the record provided us with some facts. First, the Amended Information indicates Christenson was charged with 14 counts with crimes that ranged from a class B felony to I felonies. Second, the plea questionnaire indicates the parties reached an agreement that the defendant would enter guilty pleas to three Class C felonies, and one Class I felony, and the parties would make a joint recommendation for 15 years initial confinement, and both parties would request the court make the defendant eligible for sentence adjustment. At the plea hearing, the State confirmed such to the court in its recitation of its understanding of the plea agreement. Later, defense counsel, in explaining why the

defendant was appealing, informed the State Public Defender that the deal called for the possibility of sentence adjustment after the defendant served 75% of his time.

At the postconviction motion hearing, two witnesses testified. First, trial counsel testified. In doing so, on direct, he indicated he had no independent memory of discussing sentence adjustment with the prosecutor or Christenson. See page 14. On cross examination. counsel did recall negotiating with the State, and in doing so, expressing that the defense was wanting to "only have to serve approximately 10 years". See page 17. Further that, he vaguely remembered "having a possible calculation in [his] mind at least that if he got sentence adjustment with, say 12 or 13 or 14 years he would end up doing only so much if he got sentence adjustment". See page 17-18. However, the State's response was that the State's experience in front of the courts was that the defense's request was not realistic. See page 18. On redirect, counsel explained he understood how sentence adjustment worked, and that he believed a person would have to serve 85% of their time on a crime greater than a Class F felony, but he had no direct memory of discussing such with the defendant. See page 23 of transcript. As for the SPD questionnaire, he wrote the 75% number since it was "what I at the time believed his issue was that he told me when he asked to appeal". See page 25. Defense counsel conceded there may be a misunderstanding between "what I understood and what he understood". See page 26.

Second, Christenson testified the parties met days before the plea hearing. He said the parties negotiated for 15 in and 10 out. See page 29. As for sentence adjustment, trial counsel told Christenson he would get sentence adjustment of 25% of his sentence on a C felony or lower. See page 29. As part of the deal, then, the defendant would plead to C felonies or lower. See page 30-31. Considering the amount of jail time he had sat at that point as well as the 25% off of a 15 year sentence, he would have to serve approximately another 10 years and 3 months. See page 29-30. Christenson noted "all I had to do was behave in prison and I would get" released early. See page 30. Then, on the day of the plea hearing, there was a misunderstanding regarding the counts the defendant would plead to, but that his attorney ultimately informed him that the deal was for "15 in, 10 out and that I would still get my 25 percent off". See page 33.

Argument.

As indicated above, a defendant should be permitted to withdraw his pleas if he did not enter his pleas knowingly, voluntarily, and intelligently. Just as in State v. Brown, Christenson was provided incorrect information that resulted in him choosing to accept the plea deal. Here, he was told he would get out of prison after serving 75% of his time due to sentence adjustment. However, he actually would have to serve 85% of his time, and even after that, it was only a possibility of getting out since the prosecutor, victim, and judge would also have to agree. For this reason, to stay consistent with State v. Brown, this Court should permit the defendant to withdraw his pleas.

Considering the above, the defendant kindly requests this court grant this motion.[1]

[1] Christenson filed the motion to withdraw pleas based upon a misunderstanding of the laws and how they impacted him. At the evidentiary hearing, after the evidence was provided, the court asked appellate counsel if the argument is a misunderstanding of the law or as ineffective assistance of counsel. See page 46. In response, counsel stated ineffective assistance of counsel; however, to clarify, the argument is not ineffective assistance of counsel, it was

Date: June 25. 2020

O'Connell Law Office
Attorneys for the Defendant

Electronically Signed by Timothy O'Connell
Timothy O'Connell

State Bar No. 1063957

O'Connell Law Office
403 S. Jefferson St.
P.O. Box 1625
Green Bay, WI 54305-1625
(920)-360-1811

brought as a misunderstanding of the law, and it is argued as a misunderstanding of the law.

STATE OF WISCONSIN	CIRCUIT COURT	FOREST COUNTY
STATE OF WISCONSIN Plaintiff, vs. MATTHEW J CHRISTENSON DOB: 04/12/1984 Defendant.	DA Case No.: 2017FO000173 Court Case No.: 2017CF000042 **State's Brief Opposing the Defendant's Motion to Withdraw Guilty Pleas Post-Sentencing.**	FILED JUL 17 2020 CIRCUIT COURT FOREST COUNTY, WI *For Official Use*

The State of Wisconsin, by Forest County District Attorney Charles J. Simono, hereby moves the Court to deny the defendant's motion to withdraw his guilty pleas post sentencing that is brought pursuant to §§ 971.08 and 890.30 of the Wisconsin Statutes.

STATEMENT OF THE CASE

On Monday March 19, 2018 the defendant, appearing with counsel, entered guilty pleas to three separate counts of 'Sexual Assault of a Child under the 16 years of Age' contrary to §948.02(2) of the Wisconsin Statutes and also to one count of 'Physical Abuse of a Child' contrary to §948.03(3)(b). The parties jointly recommended a bifurcated sentence of twenty-five (25) years consisting of fifteen (15) years of initial confinement and ten (10) years of extended supervision. The joint recommendation was submitted by the parties with the knowledge that a Presentence Investigation would also be conducted. The court received the defendant's changed pleas, reviewed the defendant's plea questionnaire and waiver of rights and found that the defendant had knowingly, voluntarily and intelligently waived his rights. The defendant was found guilty of the applicable four counts listed above and was remanded to the Forest County Jail for sentencing Monday May 14, 2018.

On Monday May 14, 2018 the defendant appeared again with counsel at which time the Presentence Investigation was reviewed and discussed. The court, having received arguments from the parties, sentenced the defendant to the Wisconsin State Prison System. The three counts of 'Sexual Assault of a Child under the 16 years of Age' each received a sentence of twenty-five (25) years to be bifurcated with twenty (20) years of initial confinement and five (5) years extended

supervision to run consecutive to each other. The one count of 'Physical Abuse of a Child' received a sentence of three (3) years to run concurrent with the other sentences.

On Wednesday August 14, 2019 the defendant filed his motion to withdraw his guilty pleas. The defendant asserted that a manifest injustice will occur if his pleas are not withdrawn because he did not understand the sentence adjustment statute §973.195. The defendant, although not specifically stating such, implied that his plea was not knowingly, voluntarily and intelligently given. On May 29, 2020 a motion hearing was held with all parties appearing via Zoom video conferencing due to the Coronavirus Pandemic. The defendant and his trial counsel testified at the May 29, 2020 hearing. The defendant, through appellate counsel, indicated that the basis for the motion was now in reliance upon Ineffective Assistance of Counsel. On June 25, 2020 the defendant filed his brief in support of his motion. The defendant, through the sole footnote contained within his brief, withdrew the assertion that trial counsel was ineffective. The defendant continued by stating that the basis for his motion is due to a misunderstanding of the law.

STATEMENT OF THE FACTS

1. That the Defendant, with the assistance of his attorney, completed and signed the Plea Questionnaire/Waiver of Rights form in regards to the above captioned case. (exhibit A; Transcript-March 19, 2018 p.4 lines 12-19)

2. That the defendant, having placed an "X" in each box preceding each right, waived his constitutional rights as contained on the Plea Questionnaire/Waiver of rights form including the following:
    a) I give up my right to a trial;
    b) I give up my right to remain silent and I understand that my silence could not be used against me at trial;
    c) I give up my right to testify and present evidence at trial;
    d) I give up my right to use subpoenas to require witnesses to come to court and testify for me at trial;
    e) I give up my right to a jury trial, where all 12 jurors would have to agree that I am either guilty or not guilty;

f) I given up my right to confront in court the people who testify against me and cross-examine them; and

g) I give up my right to make the State prove me guilty beyond a reasonable doubt

.....I understand the rights that have been checked and give them up of my own free will.

(exhibit A; Transcript-March 19, 2018 p.4 lines 12-23)

3. That the defendant signed the pleas questionnaire and waiver of rights form that included the following: 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: 123 and ½ years incarceration and $310,000 fine. (exhibit A)

4. That the defendant signed the pleas questionnaire and waiver of rights form that included the following above his signature: I have reviewed and understand this entire document and any attachments. I have reviewed it with my attorney (if represented). I have answered all questions truthfully and either I or my attorney have checked the boxes. I am asking the court to accept my plea and find me guilty. (exhibit A)

5. That the plea questionnaire signed by the defendant had six (6) pages attached. The first attached page outlines that each of the three counts of Sexual Assault of a Child under the age of 16, in violation of §948.02(2) also has a guilty box checked and further indicates that each count carries a maximum sentence of 40 years of incarceration and a fine of $100,000. The same sheet shows that the sole count of Physical Abuse of a Child, in violation of §948.03(3)(b) also has a guilty box checked and further indicates a maximum sentence of 3 ½ years of incarceration and a fine of $10,000. (exhibit A)

6. That the plea questionnaire signed by the defendant had six (6) pages attached. The second attached page asks the court to find the defendant eligible for sentence adjustment on each of the counts in accordance with §973.195. (exhibit A)

7. That Wisconsin Jury Instruction 2104, Second Degree Sexual Assault of a Child: Sexual Contact or Intercourse with a person who has not attained the age of 16 years - §948.02(2) is attached to the signed plea questionnaire. (exhibit A)

8. That Wisconsin Jury Instruction 2112, Physical Abuse of a Child; Recklessly Causing Bodily Harm - §948.03(3)(b) is attached to the signed plea questionnaire. (exhibit A)

9. That the defendant entered guilty pleas to counts 4, 7, and 9 all being sexual assault of a child under the age of 16 and to count 11 physical abuse of a child. (exhibit A; Transcript-March 19, 2018 p.4 lines 4-11)

10. That the defendant, by signing the plea questionnaire and waiver of rights form, acknowledged the following:

    a) That he confirmed his understanding of the joint recommendation,
    b) That he understood that the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty,
    c) That he understood that the maximum penalty he faced was 123 ½ years and a fine up to $310.000, (exhibit A)

11. That the defendant, under the Voluntary Plea section of the plea questionnaire form, acknowledged "I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the agreement" (exhibit A)

ARGUMENT

The due process protections contained in the Fourteenth Amendment to the United States Constitution require that in order for a trial court to accept a defendant's plea, the court must find that the defendant's plea was **knowingly, intelligently, and voluntarily** made. State v. Cain, 342 Wis.2d 1, 14, 816 N.W.2d 177, 184 (2012), referencing State v. Cross, 326 Wis.2d 492, 786 N.W.2d 64 (2011)(citing State v. Brown, 293 Wis.2d 594, 716 N.W.2d 906). In addition to determining that the plea is knowing, intelligent, and voluntary, the circuit court must find a factual basis for the plea or it cannot accept it. Id.

Under Wisconsin Law, the circuit courts discretionary power can permit a defendant to withdraw a guilty or no-contest plea. State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000), State ex rel. Warren v. Schwarz, 219 Wis.2d 615, 635, 579 N.W.2d 698 (1998). However, when a defendant seeks to withdraw a guilty or no-contest plea after sentencing, the defendant carries a heavy burden." Id. The defendant must establish by clear and convincing evidence that the trial court should permit the defendant to withdraw the plea to correct a manifest injustice. Id. The constitution requires that a plea be voluntarily, knowingly and intelligently entered and that a manifest injustice occurs when it is not. Id. at 636-37, 579 N.W.2d 698.

The Wisconsin Supreme Court imposes certain statutory and common law duties on the circuit courts to ensure that a defendant's plea is given knowingly, intelligently and voluntarily. State v. Cajujuan Pegeese, 387 Wis.2d 119, 136, 928 N.W.2d 590, 598 (2019), State v. Taylor, 3447 Wis.2d 30, 31, 829 N.W.2d 482 (2013), State v. Bangert, 131 Wis.2d 246, 398 N.W.2d 12 (1986). Wisconsin Statute § 971.08 sets forth mandatory requirements that must be met in order for the Circuit Court to accept a defendant's guilty plea. These mandatory requirements operate as a procedural statute designed to provide the circuit court assistance in making the constitutionally required determination that a defendant's plea is voluntary. State v. Cajujuan Pegeese, 387 Wis.2d 119, 136, 928 N.W.2d 590, 598 (2019), State v. Bangert, 131 Wis.2d 246, 398 N.W.2d 12 (1986). The circuit court must address the defendant personally and determine that their plea is being made voluntarily with an understanding as to the nature of the charge(s) and the potential punishments if convicted. State v. Cajujuan Pegeese, 387 Wis.2d 119, 136, 928 N.W.2d 590, 598 (2019), Wis. Stat. §971.08.

According to the Supreme Court in State v. Cajujuan Pegeese It has long been recognized that under the Due Process Clause, a defendant's guilty or no contest plea must be knowingly, intelligently, and voluntarily. As such, Wisconsin imposes certain statutory duties on the circuit courts to ensure that a defendant's guilty or no contest plea is knowing, intelligent, and voluntary, which include conducting a colloquy to:

(1) Determine the extent of the defendant's education and general comprehension so as to assess the defendant's capacity to understand the issues at the hearing;

(2) Ascertain whether any promises, agreements, or threats were made in connection with the defendant's anticipated plea, his appearance at the hearing, or any decision to forgo an attorney;

(3) Alert the defendant to the possibility that an attorney may discover defenses or mitigating circumstances that would not be apparent to a layman such as the defendant;

(4) Ensure the defendant understands that if he is indigent and cannot afford an attorney, an attorney will be provided at no expense to him;

(5) Establish the defendant's understanding of the nature of the crime with which he is charged and the range of punishments to which he is subjecting himself by entering a plea;

(6) Ascertain personally whether a factual basis exists to support the plea;

(7) Inform the defendant of the constitutional rights he waives by entering a plea and verify that the defendant understands he is giving up these rights;

(8) Establish personally that the defendant understands that the court is not bound by the terms of any plea agreement, including recommendations from the district attorney, in every case where there has been a plea agreement;

(9) Notify the defendant of the direct consequences of his plea; and

(10) Advise the defendant that "If you are not a citizen of the United States of America, you are advised that a plea of guilty or no contest for the offense [or offenses] with which you are charged may result in deportation, the exclusion from admission to this country or the denial of naturalization, under federal law," as provided in Wis. Stat. § 971.08(1)(c).

State v. Cajujuan Pegeese, 387 Wis.2d 119, 137-138, 928 N.W.2d 590 (2019),. State v. Taylor, 3447 Wis.2d 30, 31, 829 N.W.2d 482 (2013) (quoting State v. Brown, 293 Wis. 2d 594, 35, 716 N.W.2d 906), State v. Bangert, 131 Wis.2d 246, 398 N.W.2d 12 (1986), and §971.08 Wis. Stats.

MANIFEST INJUSTICE

In order for a defendant to withdraw a plea after sentencing, the defendant must show by clear and convincing evidence that refusing to allow him to withdraw his plea would result in a "manifest injustice." State v. Taylor, 3447 Wis.2d 30, 829 N.W.2d 482 (2013). The Wisconsin courts have delineated the following circumstances where a manifest injustice occurs such that a plea may be withdrawn post-sentencing:

(1) Ineffective assistance of counsel;

(2) The defendant did not personally enter or ratified the plea;

(3) The plea was involuntary as the defendant was without the knowledge of the charge(s) or that the sentence imposed could actually be imposed;

(4) The prosecutor breached the plea agreement

(5) The defendant did not receive the concessions tentatively contemplated in the plea agreement;

(6) That the State agreed that the defendant could withdraw the plea if the court deviated from the plea agreement.

State v. Cajujuan Pegeese, 387 Wis.2d 119, 139-140, 928 N.W.2d 590, 598-599 (2019); State v. Daley, 2006 WI App 81, 292 Wis. 2d 517, 716 N.W.2d 146 (quoting State v. Krieger, 163 Wis. 2d 241, 251 n.6, 471 N.W.2d 599 (Ct. App. 1991)).

Under Wisconsin's plea agreement procedure, the defendant is specifically warned that the prosecutor's sentence recommendation is not binding on the court. State v. Williams, 236 Wis.2d 293, 299, 613 N.W.2d 132 (2000). The specific warnings are contained in both State Form CR-227 p.1, and Wis. Stats. 971.08 as referenced above. (see Exhibit A). This warning ensures that the defendant's plea is knowing, voluntary, and intelligent. Sentencing is then conducted separately from the plea, and the trial court is not bound by the prosecutor's recommendation but instead has the duty to pronounce a sentence that protects the public interest. Id. at 300 and 135. referencing holdings in Melby v. State, 70 Wis.2d 368, 385, 234 N.W.2d 634 (1975), and State v. Betts, 129Wis.2d 1, 383 N.W.2d 876 (1986) , **no manifest injustice occurs when the trial court exceeds the State's sentence recommendation under this procedure.** Id.

DIRECT CONSEQUENCES VS. COLLATERAL CONSEQUENCES

The Wisconsin Circuit Court, when "informing defendants of their rights, are only required to notify them of the 'direct consequences' of their pleas." State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000), State ex rel. Warren v. Schwarz, 219 Wis.2d 615, 636, 579 N.W.2d 698 (1998) (quoting Brady v. United States, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)). Direct consequences of a plea have a "definite, immediate, and largely automatic effect on the range of the defendant's punishment." State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) referencing State v. James, 176 Wis.2d 230, 238, 500 N.W.2d 345 (Ct.App. 1993); State v. Brown

276 Wis.2d 559, 564, 687 N.W.2d 543, 545 (2004)

The courts are not required to inform defendants of consequences that are merely collateral to the plea. State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000), State ex rel. Warren v. Schwarz, 219 Wis.2d 615, 636, 579 N.W.2d 698 (1998) (quoting Brady v. United States, 397 U.S. 742, 755, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970)). A defendant who is not apprised of the direct consequences of a plea does not knowingly, voluntarily and intelligently enter a plea and is entitled to withdraw it to correct a manifest injustice. However, **no manifest injustice occurs when a defendant is not apprised of a collateral consequence.** State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) referencing State v. Madison, 120 Wis.2d 150, 159, 353 N.W.2d 835 (Ct.APP. 1984).

Collateral consequences do not automatically flow from the plea, but rather will depend upon a future proceeding, or may be contingent on a defendant's future behavior. State v. Brown 276 Wis.2d 559, 564, 687 N.W.2d 543, 545 (2004), State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) referencing State v. Myers, 199 Wis.2d 391, 394-395, 544 N.W.2d 609 (Ct.App.1996). "a particular consequence is deemed "Collateral" because it rests in the hands of another government agency or different tribunal." State v. Yates 239 Wis.2d 17, 25, 619 N.W.2d 132, 136 (2000)See State v. Kosina, 226 Wis.2d 482, 486, 595 N.W.2d 464 (Ct.App.1999) (quoting Torrey v. Estelle, 842 F.2d 234, 236 (9th Cir.1988)).

The distinction between direct and collateral consequences essentially recognizes that it would be unreasonable and impractical to require a circuit court to be cognizant of every conceivable consequence before the court accepts a plea. State v. Brown 276 Wis.2d 559, 564, 687 N.W.2d 543, 545 (2004) referencing State v. Byrge, 237 Wis.2d 197, 614 N.W.2d 477 (2000).

An offenders eligibility for Positive Adjustment Time (PAT) offers the offenders no more than an opportunity for an early release. An early release is not a guarantee or a right....consequently **it is not a direct consequence of an offender's plea** and a court has no duty to inform a defendant about his eligibility for PAT prior to accepting a guilty or no-contest plea. State v. Singh, 361 Wis.2d 285, 862 N.W.2d 619 (2015) (this is an unpublished opinion issued after July 1, 2009 and is being cited for its persuasive value). The Wisconsin Courts have held that collateral consequences include Sex Offender Registration, Bollig, 232 Wis.2d 561, 605 N.W.2d 199; Chapter 980 civil commitments for sexually violent persons is a collateral consequence and the defense counsel is not required to advise the defendant of the possible civil commitment. State

v. LeMere, 368 Wis.2d 624, 662, 879 N.W.2d 580, 598-599 (2016) the effect of a presumptive mandatory release date, State v. Yates, 239 Wis.2d 17, 619 N.W.2d 132; the permanent prohibition on possession of firearms under federal law, State v. Kosina 226 Wis.2d 488, 595 N.W.2d 468 (Ct.App. 1999) and probation revocation for failure to admit guilt during sex offender treatment, Warren, 219 Wis.2d at 638, 579 N.W.2d at 709. State v. Merten, 266 Wis.2d 588, 595-596, 688 N.W.2d 750, 753-754 (Ct. App. 2003).

The State, in response to such a motion, also carries a clear and convincing burden to show that defendant's plea was knowing, intelligent and voluntary. State v. Cajujuan Pegeese, 387 Wis.2d 119, 139-140, 928 N.W.2d 598-599, 598 (2019) (citing State v. Bangert, 131 Wis.2d 274, 398 N.W.2d 12 (1986). In attempting to meet its burden, the State may use any evidence to prove that the defendant's plea was knowing, and voluntary, including any documents in the record and testimony of the defendant or defendant's counsel. Id.

I. The Defendant's guilty pleas were knowing, intelligent and voluntary made and is therefore not permitted to withdraw plea.

The Wisconsin Supreme Court held in State v. Cajujuan Pegeese, 387 Wis.2d 119, 928 N.W.2d 590 (2019) the defendant's plea was freely, knowingly, and intelligently made when he entered his plea. The Cajujuan Pegeese Court, as part of its decision held that the defendant had not met his burden to demonstrate that the plea colloquy as guided by §971.08 Wis. Stats or State v. Bangert, 131 Wis.2d 246, 398 N.W.2d 12 (1986), was defective.

On August Pegeese pled guilty to robbery with threat of force as a party to a crime, in violation of Wis. Stat. §§ 943.32(1)(b) and 939.05. Prior to the plea hearing, Pegeese completed Form CR-227 which is the same as Exhibit A for Matthew Christenson.
Specifically, the "Constitutional Rights" section of Form CR-227 states as follows:

I understand that by entering this plea, I give up the following constitutional rights:

I give up my right to a trial.

I give up my right to remain silent and I understand that my silence could not be used against me at trial.

I give up my right to testify and present evidence at trial.

I give up my right to use subpoenas to require witnesses to come to court and testify for me at trial.

I give up my right to a jury trial, where all 12 jurors would have to agree that I am either guilty or not guilty.

I give up my right to confront in court the people who testify against me and cross-examine them.

I give up my right to make the State prove me guilty beyond a reasonable doubt.

I understand the rights that have been checked and give them up of my own free will.

Waiver of each of these constitutional rights is acknowledged by marking the box next to each with an "X."

In the form, Pegeese confirmed his understanding of his plea agreement with the State: a joint recommendation of three years of probation. Pegeese acknowledged that he understood "the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty," and that he understood the maximum penalty he faced was 15 years in prison, a $ 50,000 fine, or both. In the "Voluntary Plea" section of the form, Pegeese acknowledged, "I have decided to enter this plea of my own free will. I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement."

Pegeese signed and dated the form, which stated by the signature block:

> I have reviewed and understand this entire document and any attachments. I have reviewed it with my attorney (if represented). I have answered all questions truthfully and either I or my attorney have checked the boxes. I am asking the court to accept my plea and find me guilty.

Pegeese's attorney also signed the form, acknowledging that he discussed the form with Pegeese, believed Pegeese understood the form and the plea agreement, and that Pegeese was pleading "freely, voluntarily, and intelligently."

During the August 13 plea hearing, the circuit court conducted the following plea colloquy with Pegeese:

THE COURT: Have you had enough time to talk to your attorney Mr. Hoag about your cases?

THE DEFENDANT: Yes, sir.

THE COURT: Has he answered all the questions you've had?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need more time to talk with him today?

THE DEFENDANT: No, sir.

THE COURT: Are you satisfied with his representation?

THE DEFENDANT: Yes, sir.

THE COURT: You have provided me today with a Plea Agreement and Waiver of Rights document; correct?

THE DEFENDANT: Yes, sir.

THE COURT: That's your signature on the back side?

THE DEFENDANT: Yes, sir.

THE COURT: Did you read that document before you signed it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand all the statements made in that document?

THE DEFENDANT: Yes, sir.

THE COURT: Any questions about anything in that document?

THE DEFENDANT: No, sir.

THE COURT: Mr. Hoag, you reviewed the Plea Questionnaire with him?

MR. HOAG: I read it to him, Your Honor.

THE COURT: Do you believe he understands it?

MR. HOAG: I do.

THE COURT: Mr. Pageese , do you understand the Constitutional Rights you give up when you enter a plea today?

THE DEFENDANT: Yes, sir.

THE COURT: Any questions about those rights?

THE DEFENDANT: No sir.

After confirming again with Pegeese's attorney that Pegeese's plea was given "freely, knowingly and intelligently," the circuit court accepted the plea and specifically found that Pegeese's plea was "freely, knowingly, and intelligently made."

On March 19, 2018, as stated above, Matthew Marchant entered guilty pleas to three (3) counts of Sexual Assault of a Child under the age of 16, in violation of §948.02(2) Wis. Stats. and one count of Physical Abuse of a Child, in violation of §948.03(3)(b) Wis. Stats.

Matthew Christenson also completed State Form CR-227 which is the Plea Questionnaire and Waiver of Rights Form (see Exhibit A). Just as the defendant in Cajujuan Pegeese, Matthew Christenson acknowledged the waiver of his constitutional rights by marking an "X" next to each. (see Exhibit A). Matthew Christenson, also identical to the defendant in Cajujuan Pegeese, confirmed his understanding of his plea agreement with the State: a joint recommendation of twenty-five (25) years to be bifurcated with fifteen (15) years of initial confinement and ten (10) years of extended supervision. Additionally, the parties asked the court to find him eligible for Sentence Adjustment. Matthew Christenson acknowledged that he understood "the judge is not bound by any plea agreement or recommendations and may impose the maximum penalty," and that he understood the maximum penalty he faced was 123 ½ years in prison, a $ 310,000 fine, or both. In the "Voluntary Plea" section of the form, Matthew Christenson acknowledged, "I have decided to enter this plea of my own free will. I have not been threatened or forced to enter this plea. No promises have been made to me other than those contained in the plea agreement." (see Exhibit A).

Matthew Christenson also signed and dated the form which stated next to the signature block:

> I have reviewed and understand the entire document and any attachments. I have Reviewed it with my attorney (if represented). I have answered all questions truthfully And either I or my attorney have checked the boxes. I am asking the court to accept My plea and find me guilty.

Matthew Christenson's attorney also signed the form acknowledging that he discussed the form with Christenson, believed Christenson understood the form and plea agreement, and that Christenson was pleading freely, voluntarily and intelligently. (see Exhibit A)

During the March 19, 2018 plea hearing, the circuit court conducted the following plea colloquy with Matthew Christenson: (referring to the March 19, 2018 transcript pages 4 – 10)

THE COURT: ..... And to Count Four sexual assault of a child under the age of 16 and Count Seven sexual assault of a child under the age of 16, Count Nine sexual assault of a child under the age of 16 and Count 11 physical abuse of a child, how does your client wish to plead?

MR. MORGAN: Guilty.

THE COURT: Is that correct, Mr. Christenson?

CHRISTENSON: Yes, Your Honor.

THE COURT: I am looking at the Plea Questionnaire and Waiver of Rights form. Is that your signature on the second page?

CHRISTENSON: Yes, Your Honor.

THE COURT: And on the front page did you and your lawyer go through those charges and check mark your constitutional rights?

CHRISTENSON: Yes.

THE COURT: By having those checked off, are you telling me that you read them and you understand them and you want to give up those rights?

CHRISTENSON: Yes, Your Honor.

THE COURT: And by entering a plea of guilty today we are not going to have a trial and we are not going to have a jury come in and we are not going to be calling any witnesses. Knowing that you have those rights, do you wish to plead guilty?

CHRISTENSON: Yes, Your Honor.

THE COURT: At the trial the State would have to prove elements of these offenses beyond a reasonable doubt. And the elements for the physical abuse of a child, they would have to prove beyond a reasonable doubt again that you did cause bodily harm to a child and that you recklessly caused such bodily harm. Reckless means that your conduct created a situation of unreasonable risk of harm to the victim and demonstrated a conscious disregard for the victim. Do you understand what they would have to prove?

CHRISTENSON: Yes.

THE COURT: And, finally. they would have to prove the child did not obtain the age of 18 at the time of the offense. Do you understand that?

CHRISTENSON: Yes.

THE COURT: And knowledge of the age of the victim is not a defense. Do you understand that?

CHRISTENSON: Yes.

THE COURT: Now for the other offenses, they would have to prove beyond a reasonable doubt that you did have sexual intercourse with a victim and in this one count JAC, date of birth 5/21/2001. And they would have to prove that the child was under the age of 16 at the time of the intercourse. I want you to know that age--or knowledge of the age is not required. A mistake regarding the age is not a defense. Do you understand that?

CHRISTENSON: Yes.

THE COURT: And consent to intercourse is not a defense. Do you understand that?

CHRISTENSON: Yes.

THE COURT: And intercourse means any intrusion however slight by any part of a person's body or any object into the genital opening or anal opening of another. Do you understand that definition?

CHRISTENSON: Yes.

THE COURT: Sexual intercourse may be done by you or upon your instruction. Do you understand that?

CHRISTENSON: Yes.

THE COURT: Count Seven is the same except for the victim is different, but they would have to prove the same element. Do you understand that?

CHRISTENSON: Yes.

THE COURT: And for nine, they would have to prove the same elements only occurred with SLC, date of birth 4/4/2004. Do you understand that?

CHRISTENSON: Yes.

THE COURT: Now, as I said, typically you have to prove all of these elements beyond a reasonable doubt. By entering a plea today, you are admitting to those elements, and they don't have to prove anything now. Knowing that, do you wish to plead guilty?

CHRISTENSON: Yes.

THE COURT: There is an agreement here of sorts and the Court is not bound to the agreement. The Court can give you the maximum today. If I put it over and order a presentence investigation, the recommendation in the presentence are again non-binding to the Court. I can still give you the maximum. And the maximum for the sexual assault of a child is a fine of not more than $100,000, imprisonment not more than 40 years, or both. It says to Court Four and Count Seven $100,000 and not more than 40 years. And Count Nine, $100,000 and not more than 40 years. And for the physical abuse a fine of not more than 10,000, prison of not more than three years and six months, or both. I can stack those on top of each other. Knowing that, I could do that today, do you wish to proceed with guilty?

CHRISTENSON: Yes, Your Honor.

THE COURT: Has anybody made any threats or promises to you to get you--in order to get you to waive your right today and enter your pleas?

CHRISTENSON: No.

THE COURT: You are 33 years old?

CHRISTENSON: Yes.

THE COURT: And you obtained your HSED and some college?

CHRISTENSON: Yes.

THE COURT: And you are able to read and write?

CHRISTENSON: Yes.

THE COURT: And you understand what you're pleading guilty to today?

CHRISTENSON: Yes.

THE COURT: And are you under the influence of any alcohol or drugs at this time?

CHRISTENSON: No.

THE COURT: Do you suffer any mental illness at all that makes it difficult for you to understand what is going on around you?

CHRISTENSON: No.

THE COURT: Have you had enough time to think about this?

CHRISTENSON: Yes.

THE COURT: Do you understand that if you are not a citizen of the United States your plea could result in your deportation or exclusion of admission to this country or denial of naturalization under federal law?

CHRISTENSON: Yes.

THE COURT: Do you understand that if convicted of a felony you may not vote in any election until your civil rights are stored?

CHRISTENSON: Yes.

THE COURT: Do you understand that if convicted of a felony you are not allowed to possess a firearm?

CHRISTENSON: Yes.

THE COURT: If you're convicted of a serious child sex offense, you cannot engage in an occupation or participate in a volunteer position that requires you to work or interact primarily and directly with a child under the age or under the age of 16. Do you understand that?

CHRISTENSON: Yes.

THE COURT: You do have some read-ins here, apparently. And in other words, you're not being found guilty of those and not pleading guilty to those but the Court, since they are read in, can consider those at the time of sentencing. Do you understand that?

CHRISTENSON: Yes.

THE COURT: Mr. Morgan, did you have enough time to talk to your client in these matters?

MR. MORGAN: Yes.

THE COURT: Do you think he understands the nature and ramifications of his plea?

CHRISTENSON: Yes.

THE COURT: Do you think that he is waiving his rights and entering a plea freely, voluntarily, and intelligently?

MR. MORGAN: Yes.

THE COURT: Do you agree with that, Mr. Christenson?

CHRISTENSON: Yes.

THE COURT: Okay. The Court will find that he has freely, voluntary, and intelligently waived his rights and is entering his pleas and direct to enter the plea into the record. I am familiar with the facts here and had a chance to review the Complaint, and there's a factual basis for the pleas. We will find Mr. Christenson guilty of three counts of sexual assault of a child under the age of 16 and one count of physical abuse of a child.

(see March 19, 2018 transcript pages 4 – 10)

Similar to the circuit court's colloquy Cajujuan Pegeese, The Christenson court verified that the constitutional rights at issue were contained in Form CR-227 (Exhibit A), that Christenson completed and signed the form with counsel and that he had ample time to discuss the form with his lawyer. The March 19, 2018 colloquy further verified that Christenson comprehended the contents of the form, and he and his lawyer acknowledged that he understood each constitutional right he was waiving by pleading guilty. Similar to Cajujuan Pegeese , the court should conclude as it did on March 19, 2018 that Christenson's pleas were "freely, knowingly and intelligently" made.

The State respectfully requests that the court to find that Matthew Christenson has failed to meet his burden to demonstrate that the plea colloquy was defective so as to entitle him withdrawal his plea. The State further requests a specific finding that the Christenson pleas were Freely, Knowingly and Intelligently made and in so doing deny the defendant's motion to withdraw his guilty pleas.

II. A Manifest Injustice Does Not Exist When The Defendant Fails to Understand the Collateral Consequences of Sentence Adjustment Under Wisconsin Statute §973.195

The Wisconsin Court of Appeals held in State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) that the defendant was not entitled to be informed by the court of his presumptive mandatory release date from prison as that was a **collateral consequence** to the defendant's plea. The defendant in Yates, argued that the presumptive mandatory release date directly controls the amount of time he will have to serve in prison. Yates further asserted that the presumptive mandatory release date affected his present rights and not some potential future right.

The distinction between direct and collateral consequences essentially recognizes that it would be unreasonable and impractical to require a circuit court to be cognizant of every conceivable consequence before the court accepts a plea. State v. Brown 276 Wis.2d 559, 564, 687 N.W.2d 543, 545 (2004) referencing State v. Byrge, 237 Wis.2d 197, 614 N.W.2d 477 (2000). Collateral consequences do not automatically flow from the plea, but rather will depend upon a future proceeding, or may be contingent on a defendant's future behavior. State v. Brown 276 Wis.2d 559, 564, 687 N.W.2d 543, 545 (2004), State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) referencing State v. Myers, 199 Wis.2d 391, 394-395, 544 N.W.2d 609 (Ct.App.1996). **no manifest injustice occurs when a defendant is not apprised of a collateral consequence.** State v. Yates 239 Wis.2d 17, 20, 619 N.W.2d 132, 134 (2000) referencing State v. Madison, 120 Wis.2d 150, 159, 353 N.W.2d 835 (Ct.APP. 1984).

The Yates court evaluated §302.11(1) Wis. Stats. and the fact that inmates are entitled to mandatory release on parole after completing two-thirds of their respective sentence. The Yates court further highlighted that an inmate is not automatically entitled to release after completing two-thirds of a prison sentence because the parole commission may deny mandatory release on the grounds of protection of the public, or the inmate's refusal to participate in treatment or counseling.

The Court in Yates, specifically noted that in their present case that the parole commission's decision regarding Yates' release will require consideration of his rehabilitation and possible threat to the public. It will also require consideration of Yates' participation in mandated institutional treatment or counseling. This requirement is dependent upon Yates' behavior while incarcerated. His future behavior could not be anticipated by the circuit court at the time the plea was entered. Yates' potential serving of the full sentence imposed by the circuit court does not automatically flow from the plea and is dependent on factors other than the plea itself. The Yates court concluded that Yates' exposure to a possible denial of release at two-thirds of his sentence is wholly in the hands of another governmental body. Therefore, presumptive mandatory release

cannot be said to flow directly from the plea. It is collateral in nature.

The defendant, Matthew Christenson, through his brief and testimony, asserts that the basis for his motion to withdraw his pleas stems from his misunderstanding of the Sentence Adjustment law under §973.195 Wis. Stats.

According to §§973.195(1r)(a) & (b) Wis. Stats., an inmate may petition the sentencing court to adjust the sentence if the inmate has served at least the applicable percentage of the term of confinement in prison portion of the sentence. The grounds for any sentence adjustment petition could include any of the following:

1. The inmate's conduct, efforts at and progress in rehabilitation, or participation and progress in education, treatment, or other correctional programs since he or she was sentenced.
2. [Omitted from statute]
3. A change in law or procedure related to sentencing or revocation of extended supervision effective after the inmate was sentenced that would have resulted in a shorter term of confinement in prison or, if the inmate was returned to prison upon revocation of extended supervision, a shorter period of confinement in prison upon revocation, if the change had been applicable when the inmate was sentenced.
4. The inmate is subject to a sentence of confinement in another state or the inmate is in the United States illegally and may be deported.
5. Sentence adjustment is otherwise in the interests of justice.

According to §§973.195(1r)(c) & (d) Wis. Stats., the sentencing court may unilaterally deny the petition before any other objections are received. Additionally, the district attorney and the victims also have the right to object to such petition for sentence adjustment which also shall result in the denial of the sentence adjustment petition.

Similar to the situation in Yates, the case at hand before the court involves the defendant asserting that he is supposed to receive a percentage of time off of his sentence which he is not automatically entitled. Presuming that Matthew Christenson meets the threshold criteria that will allow him to submit a petition for sentence adjustment under §973.195 Wis. Stats., the sentencing court may deny the petition based on the defendant's conduct in prison, lack of substantial efforts at and progress in rehabilitation, subpar or lacking participation and progress in education, treatment, or other correctional programs since he or she was sentenced. Additionally, Matthew Christenson could also receive objection from the district attorney and/or the victims which would mandate a denial of his petition by the court. Matthew Christenson's sentence adjustment petition, if ever filed, is not guaranteed. Moreover, any such petition is subject to the review and approval of multiple individuals. Given the fact that sentence

adjustment is a mere possibility it cannot be said to flow directly from his guilty pleas and must therefore be determined to be collateral in nature.

The State respectfully requests that the court to find that the §973.195 Sentence Adjustment Statute is a collateral consequence as it does not directly flow from his guilty pleas and is conditioned upon future conduct that cannot be known at this time. The State further requests a finding that there is no Manifest Injustice as alleged by the defendant. Lastly, the State further requests that the court deny the defendant's motion to withdraw his guilty pleas.

III. The Jointly Submitted Settlement Recommendation Was Not Structured To Guarantee the Defendant Any Specific Result Before The Court.

The primary case relied upon by the defendant is State v. Brown, 276 Wis.2d. 559, 687 N.W.2d 543 (Ct.App. 2004). The parties in Brown, being the prosecutor, defense attorney and the defendant, jointly collaborated in the attempts to avoid sexual predator exposure. On May 17, 2002, Brown pled no contest to a total of six counts, including child enticement, causing a child to view sexual activity, exposing genitals to a child and intimidating a victim.

The parties advised the court on the record that the plea agreement was structured to include only charges that (1) would not require Brown to register as a sex offender under §301.45 Wis. Stats. and (2) were not sexual predator offenses under §980 Wis. Stats. so as to avoid a possible post-incarceration civil commitment. At the plea hearing, Brown's attorney explained the purposes of the plea agreement on the record:

> "What we have done here, I want to make the record clear, is try and Structure the charges that he is going to be found guilty of to be non-strike Charges and not fall in the category of sexual predator Chapter 980 charges. I think that has been achieved."

The prosecutor agreed on the record and stated that "[t]he ones he pled to are not strike offenses, are not a Chapter 980." The circuit court accepted Brown's no contest pleas. Brown was permitted to withdraw his pleas not because he lacked information of the pleas consequences, but rather because he was misinformed of those consequences by both his attorney and the prosecutor with the acquiescence by the judge. Id., at 565 and 546.

The defendant, Matthew Christenson does not, as in the Brown case, expressly assert that there was some form of joint structure that the State was also guaranteeing nor were any such

representations placed on the record as in the Brown case. The crux of the defendant's argument is that he was misinformed by his attorney. Specifically, Matthew Christenson is stating that he was allegedly told by his attorney that he would be eligible for sentence adjustment release after serving 25% of his sentence. The defendant talks about confusion on the day of the plea hearing in regards to which counts he would be pleading to which is in effect a non-argument as there was no dispute but rather a confusion over which three violations of Sexual Assault of a Child under the age of 16, in violation of §948.02(2) Wis. Stats. he would be pleading guilty. The classification of the crimes were the same, the charges were the same and the penalties were the same regardless of which charges he plead to.

The defendant also fails to advise the court that the Brown case also highlights the concept of Direct Consequences and Collateral Consequences which is referenced and argued above.

A. The Defendant is Not Entitled to Withdraw His Guilty Pleas When The Misunderstanding of a Collateral Consequence Is the Product of His Own Mind

The Wisconsin Court of Appeals held in State v. Plank, 282 Wis.2d522, 699 N.W.2d 235 (2005) that the defendant was not entitled to withdraw his plea because he misunderstood the law concerning a collateral consequence of his plea. The Plank court added that misunderstanding was the product of the defendant's own mind.

Plank entered into a plea agreement whereby he agreed to plead no contest to substantial battery, which carried a maximum sentence of three and one-half years' imprisonment and a $10,000 fine. The remaining charges would be dismissed and read in at sentencing. The State agreed that it would not recommend prison and would ask for thirty-six months' probation.

On September 8, 2003, the court accepted Plank's no contest plea. At the plea hearing, the court did not personally inform Plank that it was not bound by the plea agreement or that, under truth-in-sentencing, he was ineligible for parole or good-time credit. The court declined to follow the plea agreement's sentence recommendation and instead sentenced Plank to three and one-half years' imprisonment, including one and one-half years of initial confinement and two years' extended supervision. On May 25, 2004, Plank moved to withdraw his no contest plea, claiming it was not knowingly and voluntarily entered. After a hearing, the court denied the motion.

Plank first contends that his plea was not knowing and voluntary because he mistakenly believed the court would impose the sentence included in the plea agreement. The State concedes that Plank has made a prima facie case on this issue because: (1) the court did not personally inform Plank that it was not bound by the plea agreement and (2) Plank alleged in his post-conviction motion that he did not understand that the court was not bound by the plea agreement's sentencing recommendation.

The evidentiary hearing showed that Plank signed a plea questionnaire and waiver of rights form that includes the following:

> I understand that the judge is not bound by any plea agreement or recommendation and may impose the maximum penalty. The maximum penalty I face upon conviction is: $10,000 fine 3.5 years imprisonment.

The trial counsel for Plank testified at the evidentiary hearing that he advised Plank of his rights concerning the plea, including that the court was not bound by the sentence recommendation of the plea. Trial counsel further testified he gave the advice orally and covered the subject again when reviewing the written plea questionnaire with Plank. The trial counsel also testified that he believed Plank understood the rights he was waiving. Plank testified at the evidentiary hearing that he had read the plea questionnaire and his trial counsel reviewed it with him.

And the record from the plea hearing showed the following exchange occurred:

THE COURT: This is a Class I felony offense for which the Court could impose a fine not to exceed $10,000 or imprisonment not to exceed three years and six months, or both. Do you understand the maximum penalty you're at risk for?

THE DEFENDANT: Yes, I do.

The only contrary evidence was Plank's own testimony at the evidentiary hearing. Plank was asked, "When you reviewed the plea questionnaire with your attorney, did you understand that the $10,000.00 fine and three-and-a-half years imprisonment would be a potential penalty you were facing at sentencing?" Plank answered, "No, I thought I would not be facing that because I had the Plea Agreement." However, the circuit court found that testimony "just not believable" The Court

of Appeals found that the Trial Court record supported the circuit court's finding that Plank did, in fact, know the court was not bound by the plea agreement and denied withdrawal of his pleas.

The case at hand with Matthew Christenson revealed similar results at his May 29, 2020 hearing. Christenson's trial attorney acknowledged that he and Christenson spent some time going over the plea questionnaire and he specifically referenced the fact that the recommendation asked the court to find the defendant eligible for sentence adjustment. (May 29, 2020 transcript p.10 lines 4 – 25). Trial counsel further testified that the requested sentence adjustment is a mere possibility. (May 29, 2020 transcript p.23 lines 8-14). Trial counsel further elaborated that the sentence adjustment requires that 85% of a sentence be served for felonies that are Class F or greater. Trial counsel sated that he believes that he would have discussed this with Christenson but does not have an independent memory of it [two years after the plea hearing date] (May 29, 2020 transcript p.23 lines 15 – 23). Trial counsel also attempted to explain that the State Public Defender form that was completed by him was a best representation of what Christenson was thinking and was surprised when it turned out to not be that he would only serve 75% of his sentence. (May 29, 2020 transcript p. 23 lines 24 – 25 and page 24 lines 1 – 9). Trial counsel, upon further direct examination about the State Public Defender Form, stated that he thinks that
what the SPD questionnaire says, is that he [Christenson] was complaining that it was his understanding that he ... there's the possibility when he [Christenson] completed 75 percent of his sentence. Thus, the trial counsel drafted the SPD questionnaire form up as what he at the time believed Christenson's issue was when he asked to appeal. (May 29, 2020 transcript p.25 lines 2 – 11).

The cross examination of trial counsel confirmed that he did review the plea questionnaire with Christenson including the ramifications of entering a plea. The trial counsel did not have an independent recollection regarding the advising of Christenson that the judge was not bound by any recommendations of the party but did state that he would have advised him according to the statutes. In an attempt to clarify, the trial counsel affirmed his understanding that the sentencing judge is not required to follow either recommendation of either party and can go higher or lower and also said that the same warning is expressly said in the plea questionnaire. (May 29, 2020 transcript p.21 lines 15 – 24). Trial counsel affirmed that he reviewed the plea questionnaire with Christenson and that they went through each section, that they went through each item that the questionnaire lists. (May 29, 2020 transcript p.21 lines 25 and p. 22 lines 1 – 13).

The defendant, Matthew Christenson, testified that he was of the understanding that the joint recommendation could go higher but was also of a belief that it would not occur due to the existence of a joint recommendation. (May 29, 2020 transcript p.36 lines 17 – 25). The defendant further stated that it was a possibility that the judge could go over the recommendation, that he was aware of such possibility but then stated that it won't happen. (May 29, 2020 transcript p.37 lines 1 – 9). The defendant further acknowledged that he is not trained in the law, does not understand legal terminology and agreed that he did hear a lot of different legal terms being shared by the attorneys during a settlement conference. (May 29, 2020 transcript p. 38 lines 16 – 21 and p.39 lines 1 – 8). The defendant acknowledged that he was aware that he still, at the time prior to any plea, had a right to proceed with trial. (May 29, 2020 transcript p.42 lines 6 – 25).

The defendant, upon being asked if he remembered the plea questionnaire that he filled out, stated not really. The defendant was asked if he reviewed the plea questionnaire with his attorney to which he stated that his attorney showed him where to say yes and all that. (May 29, 2020 transcript p.43 lines 2 – 7). The defendant then agreed that his trial counsel did review the maximum penalties with him. (May 29, 2020 transcript p.43 lines 19-24). The defendant further, yet reluctantly, admitted that he was advised that the judge was not bound by the joint recommendation. The defendant further acknowledged that he was asked by the judge, at the time of the plea on March 19, 2018, that Christenson understood that the judge was not bound and could go higher that was recommended. (May 29, 2020 transcript p.44 lines 4 – 22).

The testimony from the May 29, 2020 hearing clearly shows that Christenson had a selective memory of things that transpired over two years ago. The memory for Christenson, if believable, was so very precise and specific when being questioned by his attorney yet was evasive and reluctant to answer questions during cross examination often having to be forced to answer questions resulting in admissions. The testimony of trial counsel was consistent with the representations made during the March 19, 2018 plea hearing. To the extent that trial counsel did not recall a matter also appeared credible through his testimony. Christenson ultimately could not deny that he was aware of the joint recommendation presented to the court, that he reviewed the plea questionnaire with his attorney (exhibit A), and that he was advised that the judge was not bound by any joint recommendation.

The main dispute surrounds the concept of sentence adjustment whereby the trial counsel was clear in that he understood that 85% of any sentence would have to be served before

Christenson would be able to seek a possible advantage from §973.195 Wis. Stats. Moreover, trial counsel was clear in his direct examination by appellate counsel that the completed SPD form was filled out in a manner to reflect the thoughts of Christenson. Specifically that Christenson thought he was entitled to relief in the form of 25% off of his sentence. It is only Christenson who has developed an incorrect belief that he is entitled to some form of sentence relief after serving 75% of his sentence. Similar to the defendant in Plank, Christenson's misunderstanding is that of a collateral consequence which is not a basis for a plea withdrawal as the misunderstanding is clearly the product of Christenson's own mind and such a notion was never expressed at the plea. Additionally, based on the testimony from the May 29, 2020 hearing, it has been made painfully clear that there was no express intent of the parties to proctor a settlement that would force a sentence of only 25 years with a 25% relief from Christenson's sentence.

The State respectfully requests that the court to find that the concept of any possible relief under sentence adjustment §973.195 Wis. Stats. was at the sole belief of the defendant and in doing so also finding that the sentence adjustment, being a collateral consequence, is not a basis for a plea withdrawal. The State further requests that the court deny the defendant's motion to withdraw his guilty pleas.

CONCLUSION

The defendant's motion to withdraw his guilty pleas post-sentencing should be denied. The basis for this begins with the fact that he has failed to meet his burden of proof to demonstrate that the plea colloquy was defective so as to entitle him withdrawal of his plea. The defendant relied, in part, on §971.08 Wis. Stats. and the Wisconsin Courts through State v. Cajujuan Pegeese, 387 Wis.2d 119, 928 N.W.2d 590 (2019) and State v. Bangert, 131 Wis.2d 246, 398 N.W.2d 12 (1986) have established clear guidelines and precedent as to what a circuit court must accomplish when taking and accepting a plea. The facts before the court clearly establish that all of the Bangert and §971.08 requirements were met. The defendant has failed to refute the proper colloquy being used at his plea hearing.

The defendant, in addition to reviewing and signing the plea questionnaire with his attorney, has affirmed through testimony that he was aware that the judge could exceed any recommendation of the parties as he was not bound to them. The defendant, despite continued efforts to avoid answering questions asked by the State, ultimately admitted that he knew he could have still gone to

trial, that his maximum penalty faced was 123 ½ years and a fine of $310,000. The concept of the maximum penalty and knowledge that the judge could order the same leaves little credibility to Christenson when he holds onto the concept that he was somehow guaranteed to be out of prison in 10 years. In addition to Christenson's lack of credibility from the May 29, 2020 hearing, the collateral consequence of a possible sentence adjustment does not give rise to allowing the withdrawal of his plea and thus there is no Manifest Injustice.

The State hereby respectfully request the Court to deny the defendant's motion to withdraw his pleas and dismiss the motion without further delay.

Respectfully submitted,

Date Signed: 07/17/20

Electronically Signed By:

Charles J Simono

District Attorney

State Bar #: 1030774

BY THE COURT
8-19-20
Patrick O'Melia Date
Circuit Court Judge, Branch I

FILED
AUG 19 2020
CIRCUIT COURT
FOREST COUNTY, WI

STATE OF WISCONSIN CIRCUIT COURT FOREST COUNTY

STATE OF WISCONSIN,

Plaintiff,

Case No. 17-CF-42

-vs.-

MATTHEW J. CHRISTENSON,

Defendant.

DECISION AND ORDER ON THE DEFENDANT'S MOTION TO WITHDRAW HIS GUILTY PLEA

On March 19, 2018, the defendant pled guilty to three separate counts of Second Degree Sexual Assault of a Child, contrary to Wis. Stat. § 948.02(2), as well as one count of Child Abuse—Recklessly Causing Harm, Contrary to Wis. Stat. § 948.03(3)(b). The parties jointly recommended a bifurcated sentence of twenty-five (25) years, consisting of fifteen (15) years of initial confinement and ten (10) years of extended supervision. With the understanding that a Presentence Investigation would be conducted, Attorney Morgan and Attorney Simono informed the Court of their joint recommendation. The Court received the defendant's pleas and reviewed the defendant's completed plea questionnaire and waiver of rights. Thereafter, the Court found that the defendant freely, voluntarily, and intelligently waived his rights and entered his guilty pleas.

Mr. Christensen was found guilty of the four counts and remanded to the Forest County Jail until sentencing.

Following preparation of a Presentence Investigation, the defendant was sentenced on May 14, 2018. On the three counts of sexual assault, the Court sentenced the defendant to a bifurcated sentence of twenty-five (25) years, consisting of twenty (20) years of initial confinement and five (5) years of extended supervision, to run consecutive to each other. On the child abuse count, the Court sentenced the defendant to a sentence of three (3) years, to run concurrent with the other sentences.

On August 14, 2019, the defendant filed a motion to withdraw his guilty pleas pursuant to Wis. Stats. §§ 971.08 and 809.30. As a basis for his motion, the defendant argued that his plea was not entered knowingly, voluntarily, or intelligently. According to the defendant, the plea deal was explicitly designed so that he would be released after serving 75% of his sentence under Wis. Stat. § 973.195. However, Mr. Christenson now asserts that was neither a legal impossibility nor guaranteed under the provisions of Wis. Stat. § 973.195, the sentence adjustment statute.

A hearing was held before the Court, via Zoom, on May 29, 2020, at which time testimony was taken from the defendant and his trial attorney, Andrew Morgan. During the hearing, the defendant's appellate attorney, Timothy O'Connell, indicated that the basis for withdrawal was a claim of ineffective assistance of counsel.

Yet, within a footnote to his post-hearing brief, Attorney O'Connell now indicates that the motion to withdraw his client's plea is due to a misunderstanding of the law, and not a claim of ineffective assistance of counsel. Attorney O'Connell makes the following argument:

> [A] defendant should be permitted to withdraw his pleas if he did not enter his pleas knowingly, voluntarily, and intelligently. Just as in State v. Brown, Christenson was provided incorrect information that resulted in him choosing to accept the plea deal. Here, he was told he would get out of prison after serving 75% of his time due to sentence adjustment. However, he actually would have to serve 85% of his time, and even after that, it was only a possibility of getting out since the prosecutor, victim, and judge would also have to agree. For this reason, to stay consistent with State v. Brown, this Court should permit the defendant to withdraw his pleas.

(Def.'s Br. 2).

In response, the State makes the following arguments: first, Mr. Christenson's guilty pleas were knowingly, intelligently, and voluntarily made, and, as a result, he should not be permitted to withdraw his plea; second, a manifest injustice does not exist when a defendant fails to

understand the collateral consequence of sentence adjustment under Wis. Stat. § 973.195; third, the joint recommendation was not structured to guarantee Mr. Christenson any specific result before the Court; and lastly, a defendant is not entitled to withdraw his guilty plea when the misunderstanding of the collateral consequence is the product of his own mind.

DECISION

I. RELEVANT LEGAL PRINCIPLES

A. Standard of Review—Standard to Withdraw Guilty Plea

Under the Due Process Clause of the Fourteenth Amendment, a defendant's guilty plea must be affirmatively shown to be knowing, voluntary, and intelligent. State v. Cross, 2010 WI 70, ¶ 16, 326 Wis. 2d 492, 786 N.W.2d 64 (citing State v. Brown, 2006 WI 100, ¶ 25, 293 Wis. 2d 594, 716 N.W.2d 906). As such, Wisconsin imposes certain statutory and common law duties on circuit courts to ensure that a defendant's plea is knowingly, intelligently, and voluntarily. See State v. Taylor, 2013 WI 34, ¶¶ 30-31, 347 Wis. 2d 30, 829 N.W.2d 482.

"When a defendant seeks to withdraw a guilty plea ***after*** sentencing, he must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" State v. Taylor, 2013 WI 34, ¶ 24, 347 Wis. 2d 30, 829 N.W.2d 482 (citations omitted)(emphasis added). Wisconsin courts have described the several circumstances where a manifest injustice occurs, such that a plea may be withdrawn post-sentencing. State v. Cajujuan Pegeese, 2019 WI 60, ¶ 24, 387 Wis. 2d 19, 928 N.W.2d 590.

As relevant to this case, "[o]ne way the defendant can show manifest injustice is to prove that this plea was not entered knowingly, intelligently, and voluntarily. A plea not entered knowingly, intelligently, and voluntarily violates fundamental due process, and a defendant therefore may withdraw the plea as a matter of right." Id. ¶¶ 24-25 (citations omitted). Plea withdrawal is committed to the discretion of the trial court. State v. McCallum, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997).

Two methods exist by which courts typically review motions to withdraw guilty pleas post-sentencing. State v. Negrete, 2012 WI 92, ¶ 16, 343 Wis. 2d 1, 819 N.W.2d 749. One method, based on State v. Bangert, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), applies when the defendant's motion alleges defects in the plea colloquy (a "Bangert" allegation). See State v. Hoppe, 2009 WI 41, ¶ 3, 317 Wis. 2d 161, 765 N.W.2d 794. The second method, based on Nelson v. State, 54 Wis. 2d 489, 195 N.W.2d 629 (1972), and State v. Bentley, 201 Wis. 2d 303, 548 N.W.2d 50 (1996),

applies when the defendant seeks a plea withdrawal because of factors independent of the plea colloquy (a "Nelson/Bentley" allegation). See Hoppe, 2009 WI 41, ¶ 3. The method used to review whether the defendant is entitled to withdrawal of his/her guilty plea post-sentencing is significant, because distinctions exist between the Bangert approach and the Nelson/Bentley approach. See State v. Hampton, 2004 WI 107, 57-65, 274 Wis. 2d 379, 683 N.W.2d 14.

For example, in Bangert-type cases involving allegedly defective plea colloquies, the burden shifts to the ***State*** to demonstrate by clear and convincing evidence that the defendant's plea was knowingly, intelligently, and voluntarily made. Id. ¶ 62. Yet, in Nelson/Bentley-type cases, where the plea colloquy was sufficient but the defendant asserts that factors independent of the plea colloquy rendered the plea deficient, the ***defendant*** has the burden of proving all the elements of the alleged error by clear and convincing evidence. Id. ¶ 63. The defendant must prove the linkage between his plea and the purported defect, and the proof must add up to manifest injustice. Id.

B. Direct vs. Collateral Consequences

It is well-established that in informing defendants of their rights, courts are only required to notify them of "direct consequences" of their pleas. State ex rel. Warren v. Schwartz, 219 Wis. 2d 615, 636, 679 N.W.2d 698 (1998)(citing Brady v. United States, 397 U.S. 742, 755, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970)). As such, defendants do not have a due process right to be informed of consequences that are merely collateral to their pleas. See State v. Santos, 136 Wis. 2d 528, 531, 401 N.W.2d 856 (Ct. App. 1987); State v. Madison, 120 Wis. 2d 150, 159-61, 353 N.W.2d 835 (Ct. App. 1984). "The distinction between direct and collateral consequences of a plea...turns on whether the result represents a definite, immediate, and largely automatic effect on the range of the defendant's punishment." State v. James, 176 Wis. 2d 230, 238, 500 N.W.2d 345 (Ct. App. 1993)(citations and internal quotations omitted).

The Court was unable to locate any published case law that indicates whether a sentence adjustment is a direct consequence or a collateral consequence. Accordingly, the State directs the Court to an unpublished court of appeals opinion from 2015. State v. Singh, Nos. 14-AP-846-CR, 14-AP-847-CR, 14-AP-1601, 14-AP-1602, 2015 WL 522305 (Wis. Ct. App. Feb. 10, 2015). Although unpublished, pursuant to Wis. Stat. § 809.29(3), the Court may look to the Singh opinion for guidance as a persuasive source of authority. In that opinion, the court of appeals addressed whether positive adjustment time (PAT) constitutes a direct or collateral consequence. Id. at *5.

The defendant argued that PAT eligibility was a direct consequence of his guilty plea and therefore the court had a duty to inform him about PAT eligibility at the plea hearing. Id. The court rejected this argument, explaining that "an offender's eligibility for PAT offers the offenders no more than an ***opportunity*** for an early release; an early release is not a guarantee or a right...Consequently, it is not a direct consequence of an offender's plea and a court has no duty to inform a defendant about his eligibility for PAT prior to accepting a guilty plea." Id. (emphasis in original).

The Court sees no reason why this same reasoning would not apply to sentence adjustments governed by Wis. Stat. § 973.195. Pursuant to the statutory language, there is no guarantee that a defendant is released when he/she serves the applicable percentage of his/her sentence. For example, to even qualify for the sentence adjustment, the defendant would have to demonstrate positive conduct, efforts and progress in rehabilitation, or efforts and progress at in education, treatment, or other correctional programs since he/she was sentenced. Wis. Stat. § 973.195(1r)(b)1. In addition, either the court or the district attorney could object to the sentence adjustment petition. Wis. Stat. § 973.195(1r)(c). Lastly, for violations of Wis. Stat. § 948.02(2), any victims of the offense may object to the petition. Wis. Stat. § 973.195(1r)(d). Therefore, as in Singh, sentence adjustment offers defendants no more than an opportunity for early release; the defendant's release is neither a right nor guaranteed under the statute. As such, in the Court's judgment, sentence adjustments would qualify as collateral consequences, meaning a court would not need to inform a defendant of such a consequence.

C. State v. Brown, 2004 WI App 179, 276 Wis. 2d 559, 687 N.W.2d 543

Interestingly, however, the court of appeals has drawn a distinction between a defendant ***lacking information*** on collateral consequences versus a defendant being ***misinformed*** of those consequences. In State v. Brown, the court indicated as follows:

> The State correctly asserts that the distinction between direct and collateral consequences determines whether a defendant may withdraw a plea due to lack of information. However, Brown seeks to withdraw his pleas not because he lacked information of the pleas' consequences, but rather because he was ***mis*** informed of those consequences by both his attorney and the prosecutor, with acquiescence by the judge. Wisconsin courts have permitted defendants to withdraw pleas that were based on a misunderstanding of the consequences, even when those consequences were collateral. See, e.g., State v. Riekkoff, 112 Wis. 2d 119, 128, 332 N.W.2d 744 (1983); State v. Woods, 173 Wis. 2d 129, 140, 496 N.W.2d 144 (Ct. App. 1992).

2004 WI App 179, ¶ 8, 276 Wis. 2d 559, 687 N.W.2d 543 (emphasis in original).

II. APPLICATION OF LEGAL PRINCIPLES

The defendant does not contend that the Court committed an error during the plea colloquy. Accordingly, he is not asserting that a Bangert violation has occurred. Therefore, the Court's analysis is not guided by the Bangert decision.

Instead, the crux of Mr. Christenson's motion is that he was ***misinformed*** of the applicable sentence adjustment accompanying the four charges he pled guilty to as required by the plea agreement. He is therefore asserting that a Nelson/Bentley violation has occurred, meaning that the defendant bears the burden of proving, by clear and convincing evidence, that a manifest injustice would occur if he were not permitted to withdraw his guilty plea.

First, the distinction between direct and collateral consequences is not necessarily dispositive under the circumstances of this case. The State argues that a manifest injustice does not occur when a defendant is not apprised of a collateral consequence, such as a sentence adjustment pursuant to Wis. Stat. § 973.195. (States' Br. 18). Yet, as described above, a meaningful distinction exists between lacking information of a collateral consequence and being misinformed of a collateral consequence. Mr. Christenson is not asserting that he lacked information regarding the sentence adjustment, but that he was misinformed of the applicable sentence adjustment.

Second, in order for a defendant to prove that he/she genuinely misunderstood a collateral consequence, the case law suggests that the record explicitly reflect the defendant's misunderstanding, as well as the prosecutor and trial judge's acquiescence in such misunderstanding. For example, in State v. Brown, the defendant entered his pleas under a misunderstanding of the effect of the pleas. 2004 WI App 179, ¶ 10. The plea agreement was specifically structured to include only charges that would not require Brown to register as a sex offender and there were not sexual predator offenses under Wis. Stat. ch. 980, potentially subjecting Brown to postincarceration commitment. Id. ¶ 2. At the plea hearing, Brown's counsel explained the purposes of the plea hearing on the record. Id. Moreover, the prosecutor agreed and stated that "the ones he pled to are not strike offenses, are not a Chapter 980." Id.

Accordingly, the court of appeals explained as follows:

> Brown entered his pleas under a misunderstanding of the effect of the pleas...The trial judge acquiesced to Brown's misunderstanding. More than the mere acquiescence of the prosecutor in Riekkoff, here the prosecutor's affirmative misstatements contributed to Brown's misunderstanding...Brown believed he

> could plead no contest to felony charges and not be subject to sex offender registration or post-incarceration commitment when, as a matter of law, he could not.

Id. ¶ 10.

Similarly, in State v. Riekkoff, 112 Wis. 2d 119, 332 N.W.2d 744 (1983), the defendant entered a guilty plea as part of a plea agreement that purported to allow him to appeal an evidentiary ruling contrary to the guilty-plea-waiver rule. Id. at 127. The Wisconsin Supreme Court concluded that he could not circumvent the rule in order to obtain appellate review of the evidentiary ruling. Id. at 127-28. However, because he misunderstood the consequences of the plea, Riekkoff was permitted to withdraw his guilty pleas. Id. at 128. The court emphasized that both the prosecutor and the trial judge acquiesced in Riekkoff's misunderstanding. Id.

Lastly, in State v. Woods, 173 Wis. 2d 129, 496 N.W.2d 144, the court of appeals held as follows:

> The record is clear that Woods, at least in part, made the decision to plead guilty based on inaccurate information provided to him by the lawyers and judge. The plea agreement to a legal impossibility rendered the plea an uninformed one. Furthermore, when, as here, inaccurate legal information renders a plea an uninformed one, it can also compromise the voluntariness of the plea. As the supreme court explained in State v. Riekkoff, 112 Wis. 2d 119, 128, 332 N.W.2d 744, 749 (1983), when a defendant pled guilty under legal misunderstanding of the appellate effect of his plea, "as a matter of law his plea was neither knowing nor voluntary."

Id. at 141.

However, here, there is nothing in the transcripts from the plea hearing or the sentencing hearing that indicate the plea deal was designed so that Mr. Christenson would be released after serving 75% of his sentence. During the plea hearing, the following exchange occurred regarding the sentence adjustment:

MR. SIMONO: ...And there would be some other provision as such as the fact that I will be joining in with the Defense asking the Court to find him eligible, Mr. Christenson eligible for the SAR--

MR. MORGAN: Sentence adjustment.

MR. SIMONO: --under 9713.195 (sic).

THE COURT: That your understanding of the agreement here, Mr. Morgan?

MR. MORGAN: Yes, Your Honor.

(3/19/2019 Plea Hearing Tr., 3:15-23).

This understanding is also reflected in the plea questionnaire that Mr. Christenson signed on March 19, 2018. On page, "The parties request that the court find the defendant eligible for sentence adjustment on each of the above counts in accord with 973.195, Stats." Accordingly, Wis. Stat. § 973.195 makes clear that the "applicable percentage" for Class C felonies is 85%, not 75%.

Nothing in the sentencing hearing transcript even refers to the sentence adjustment. In fact, the only documentation in the record that indicates Mr. Christenson may have been informed of a 75% sentence adjustment is the SPD Appellate Questionnaire. However, at the evidentiary hearing, Attorney Morgan explained as follows when asked whether he understood his client would have the possibility of getting out after serving 75 percent or 85 percent of his sentence:

MR. MORGAN: I understand that its 85 percent if its above I think it's a Class F felony in seriousness. And I believe that I would have discussed that with the defendant, but I really have no independent memory of it.

And I can see in the documentation that it is specified by me when I filled out the SPD questionnaire. Seventy-five percent was what he apparently felt was a surprise to him or he was thinking 75 percent when it turned out not to be and...But I have no independent memory of it.

...

Well, I think that's what the SPD questionnaire says, is that he [Mr. Christenson] was complaining that it was his understanding that he could get done in 75 percent of his -- approx. -- and it's -- the wording that I'm reading on there is the possibility of sentence adjustment. So there's the possibility when he completed 75 percent of his sentence. So I'm writing that up as what I at the time believed his issue was that he told me when he asked to appeal. But I don't have any independent memory of it. I have to defer to that document.

...

...I don't have any independent memory of it. At the same time my own understanding of the statute I'm real clear on. But, you know, there's a possible gap between what I understood and what he understood. Maybe it just wasn't getting communicated clearly enough.

(5/29/2020 Evidentiary Hearing Tr., 23:19-24:4; 25:2-12, 26:2-7).

As such, the only direct evidence in the record indicating that the defendant was misinformed of the applicable sentence adjustment is the defendant's own testimony from the evidentiary hearing. The defendant testified as follows regarding the plea agreement discussions that occurred on March 13, 2019:

> MR. CHRISTENSON: Mr. Morgan told me that no matter what happens at the -- at the -- at the -- sentencing, no matter what happens that I still would get my 25 percent off my – my sentence due to the – the – the amended, reduced charges. So that's what happened at sentencing, that I still would be able to get the 25 percent off because Mr. Simono reduced the charges.

(5/29/2020 Evidentiary Hearing Tr., 30:24-31:1-6).

On March 14, 2019, Count 4 ***was reduced*** from Repeated Sexual Assault of a Child, a Class B felony, to Sexual Assault of a Child Under 16 Years of Age, a Class C felony. As a result of that reduction, Mr. Christenson would be ***eligible to petition the court for a sentence adjustment*** under Wis. Stat. § 973.195. Yet, pursuant to that subsection (1g), Mr. Christenson would only be eligible for a 15% sentence adjustment with respect to the three Class C felonies (Counts 1, 3, and Amended 4). He would be eligible for a 25% sentence adjustment with respect to the Class I felony (Count 11). As a result, while a 25% sentence adjustment was a potential for Mr. Christenson, it was only with respect to Count 11, not all four counts.

Thereafter, immediately prior to the plea hearing on March 19, 2019, the plea agreement was again amended. Although a Second Amended Information was produced as part of the plea agreement, the defendant still pled to the same classification of offenses as was required by the original plea agreement—three Class C felonies (Counts 4, 7, and 9) and one Class I felony (Count 11). The joint recommendation remained the same, and the applicable percentage for the sentence adjustment pertaining to each charge remained the same, as well.

Ultimately, the Court finds that this case does not present the same circumstances as in Brown, Riekkoff, and Wood, where it was clear and uncontroverted from the record that the defendant was misinformed and the prosecutor and trial judge acquiesced in the misunderstanding. There is no indication in the transcript from the plea hearing or the sentencing hearing that the parties had specifically structured the plea agreement so that Mr. Christenson would be eligible to petition for release after serving 75% of his sentence. Moreover, the record does not reflect any acquiescence by the Court of the defendant's alleged misunderstanding.

Therefore, in the absence of any affirmative corroboration in the record, Mr. Christenson has not demonstrated by clear and convincing evidence that his guilty plea was not made knowingly, voluntarily, or intelligently.

ORDER

For the reasons stated above, the Court hereby denies the defendant's motion to withdraw his guilty plea.

THIS DECISION AND ORDER ARE FINAL FOR PURPOSES OF APPEAL.

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DISTRICT III

August 10, 2021

To:

Hon. Patrick F. O'Melia
Circuit Court Judge
Oneida County Courthouse
Electronic Notice

Penny Carter
Clerk of Circuit Court
Forest County Courthouse
Electronic Notice

Eric Michael Muellenbach
Assistant Attorney General
Electronic Notice

Timothy T. O'Connell
Electronic Notice

Charles J. Simono
District Attorney
Electronic Notice

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

2020AP1469-CR State of Wisconsin v. Matthew J. Christenson
(L. C. No. 2017CF42)

Before Stark, P.J., Hruz and Nashold, 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 Christenson appeals from an amended judgment convicting him of three Class C felonies and one Class I felony, and from an order denying 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 (2019-20).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

In order to withdraw a plea after sentencing, a defendant must demonstrate by clear and convincing evidence either that the plea colloquy was defective and the defendant did not understand information that should have been provided, or that some other manifest injustice occurred. ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Manifest injustice can arise from coercion, a genuine misunderstanding on the defendant's part, an insufficient factual basis to support the charge, ineffective assistance of counsel, or a failure by the prosecutor to fulfill the plea agreement. ***State v. Krieger***, 163 Wis. 2d 241, 249-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991).

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). Because the circuit court is in the best position to observe witness demeanor and gauge the persuasiveness of testimony, it is the "ultimate arbiter" for credibility determinations when acting as a fact finder. ***Johnson v. Merta***, 95 Wis. 2d 141, 151-52, 289 N.W.2d 813 (1980); *see also* WIS. STAT. § 805.17(2). We will also accept the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous, but we will independently determine whether those facts demonstrate that the defendant's plea was knowing, intelligent, and voluntary or the result of a manifest injustice. ***State v. Brown***, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906.

In the circuit court, Christenson raised a claim of manifest injustice based upon the alleged ineffective assistance of his trial counsel and a genuine misunderstanding of the consequences of his pleas. Specifically, Christenson alleged that his trial counsel erroneously advised him that he would be released from custody after serving 75% of his initial confinement period, when in fact Christenson would not be eligible for sentence adjustment on three of the

four counts of conviction until after he had served 85% of those sentences, and then only if the prosecutor, victim and court all agreed to the request. *See* WIS. STAT. § 973.195(1g) (requiring minimum of 85% of sentence to have been served prior to sentence adjustment eligibility for Class C to E felonies). The circuit court held an evidentiary hearing on Christenson's motion.

On appeal, Christenson contends: (1) the circuit court erred as a matter of law by requiring Christenson to present "uncontroverted" evidence that his trial counsel misinformed him about the requirements for sentence adjustment and that the prosecutor and court acquiesced to such misinformation; and (2) the court failed to make a factual finding as to whether Christenson's counsel misinformed him with respect to the sentence adjustment statute. We disagree with Christenson's characterizations of the court's legal and factual determinations.

First, the circuit court correctly stated multiple times that it was Christenson's burden to demonstrate a manifest injustice by clear and convincing evidence. In evaluating whether Christenson had met his burden, the court observed that the only evidence supporting the allegation that counsel had misinformed Christenson as to the requirements for sentence adjustment was Christenson's own testimony to that effect. In contrast, counsel testified that he himself understood the sentence adjustment requirements of WIS. STAT. § 973.195 and believed (although he could not specifically recall) that he would have discussed the 85% figure with Christenson. Moreover, both the plea colloquy and plea questionnaire stated that there would be a joint recommendation to find Christenson eligible for sentence adjustment in accordance with § 973.195, without specifying the amount of initial incarceration time that Christenson would first need to serve. The court contrasted this evidence with that found in several cases in which manifest injustice was established when it was undisputed that misinformation had been provided to the defendant on the record without any correction.

In this context, the circuit court's reference to "uncontroverted" evidence did not signify that the court was requiring Christenson to meet some burden beyond clear and convincing evidence. Rather, the court's differentiation of other cases involving uncontroverted evidence was part of its explanation as to why Christenson's testimony alone—which was partially undermined by counsel's testimony and not corroborated by the record—failed to clearly and convincingly establish that counsel had misinformed Christenson about the requirements of the sentence adjustment statute.

Finally, the circuit court correctly cited ***State v. Brown***, 2004 WI App 179, ¶7, 276 Wis. 2d 559, 687 N.W.2d 543, for the proposition that a defendant's lack of information about the collateral consequences of a plea does not constitute a manifest injustice unless the defendant was actually misinformed about those consequences. We fully agree with the court's conclusion that eligibility for sentence adjustment is a collateral consequence of a plea. Here, the court acknowledged Christenson's testimony that his counsel told him he would get "25 percent off" his sentence, but the court did not credit Christenson's testimony on this point, especially given evidence to the contrary at the postconviction hearing. Thus, contrary to Christenson's assertion, the court implicitly found that Christenson had not been misinformed by counsel. Accordingly, pursuant to ***Brown***, Christenson was not entitled to plea withdrawal.

Upon the foregoing reasons,

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

APPENDIX CERTIFICATION

I hereby certify that filed with this petition for review, either as a separate document or as part of this petition, is an appendix that complies with Wis. Stat. 809.62(2)(f), and that it contains, at a minimum: 1) a table of contents; 2) the decision and opinion of the court of appeals; 3) the findings or opinion of the trial court necessary for an understanding of petition; and, 4) any other portions of the record essential to an understanding of the issues raised.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

August 19, 2021

Signed:

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