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**DISTRICT I**

October 3, 2023

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

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2022AP1287-CR

State of Wisconsin v. Oshonti K. Cannady (L.C. # 2019CF2867)

Before White, C.J., Donald, P.J., and Dugan, J.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Oshanti Cannady appeals the judgment convicting him of second-degree reckless homicide while armed and two counts of second-degree reckless injury for shooting three people and killing one of them. The sole issue on appeal is whether Cannady showed a fair and just reason for presentence plea withdrawal. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1) (2021-22).<sup>1</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

### ***Background***

The charges against Cannady stemmed from an incident where he shot his girlfriend B.M.Z., her mother S.C., and his girlfriend's friend A.M. S.C. died as a result. At the plea hearing, Cannady admitted that the facts in the criminal complaint were true and accurate except for some statements attributed to him.<sup>2</sup> However, at the sentencing hearing that followed, Cannady made statements that caused the court to question whether he was denying his guilt and

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<sup>2</sup> During the plea colloquy, the following exchange took place between the court and Cannady's trial counsel at the time, Attorney Robert Webb:

THE COURT: Are the facts stated in that complaint true?

ATTORNEY WEBB: Your Honor, when you say "true," there are some—There are some statements that are attributable to him, but the actions underneath it will be sufficient, so it's substantially true with the exception of some statements; but we will be able to discuss those at the sentencing timeframe if they are made—made relevant at that point.

THE COURT: All right. Did you—Do you want to tell me what the factual basis is then for each reckless injury and for the homicide charge specifically?

ATTORNEY WEBB: No, what I indicated there's a factual basis for those charges; but when the Court asked the question is each and every one of the comments in the complaint true, there's some statements that allegedly were made by Mr. Cannady that wouldn't have to do with the underlying charges that we would disagree with.

THE COURT: All right. But the substance that makes up the actual factual basis for the three charges that he's pleading guilty to, you do believe that there's a factual basis?

ATTORNEY WEBB: Yes, Your Honor.

THE COURT: All right. And generally, Mr. Cannady, then the criminal complaint is true and accurate with the exception of some of the statements that have been attributed to you; is that accurate?

THE DEFENDANT: Yes.

claiming that he was acting in self-defense. At one point, Cannady remarked: “I acted in pure self-preservation, also known as self-defense; and that ended tragically.”

In light of Cannady’s responses, the circuit court did not proceed with the sentencing and instead adjourned the case so that Cannady could decide how to proceed. At that status hearing that followed, trial counsel, Attorney Robert Webb, told the court that Cannady wanted to withdraw his pleas. Attorney Webb later informed the court that Cannady was withdrawing this request and asked the matter be set for a sentencing hearing.

At that second sentencing hearing, the court asked Cannady to explain “in your own words, what did you do that were the three crimes you plead guilty to?” Cannady said, “[w]ithin the struggle for the firearm, I still was the last one who had possession over it. So with that being said, I was the one who [is] responsible for the act in itself.” The court then inquired: “So when you say you were the last one who had the firearm, there was no longer self-defense, is that correct?” Cannady answered, “[y]es.” He elaborated: “I did have last control over the firearm, but it did go off not because I wanted it to go off but because it went off while we were fighting for it.” The circuit court concluded that Cannady had presented conflicting scenarios of what had transpired and the matter was set for a status conference so that Attorney Webb could file a motion to withdraw and Cannady could pursue plea withdrawal.

Thereafter Cannady, represented by successor trial counsel Attorney Scott Anderson, moved to withdraw his pleas, asserting that before he entered them, he had not received police reports indicating that two men who were with Cannady at the crime scene had implicated him in the crimes. Cannady claimed that if he had been given that information, he would have gone to trial and argued that he acted in self-defense.

The circuit court held a hearing where both Cannady and Attorney Webb testified. Cannady explained that he was told that he would have a chance to tell his side of the story after taking the plea deal. He also said that he had talked about the self-defense claim with both his two prior attorneys—Attorney Webb and Attorney Matthew Ricci—and that he knew he could use that claim at trial, but he chose not to because he did not want to implicate the two friends who were with him at the crime scene. Cannady explained he was unwilling to implicate his friends: “I didn’t want to put my family at risk in telling on two known criminals.”

Cannady testified that he did not know that the two friends who were with him had talked to the police until he was informed of the reports by Attorney Anderson. Cannady additionally testified that before his trial was to begin, trial counsel at the time, Attorney Ricci, told him “the people you don’t want to say nothin’ about, they have a lot to say about you[.]” According to Cannady, this was when he first learned there would be witnesses against him. Cannady, however, testified that he never saw the State’s witness list, which included the names of his two friends, until Attorney Anderson showed it to him. Cannady testified that if he had the reports earlier, he would have known about his friends turning against him and would have changed his mind about being a snitch and would have proceeded to trial.<sup>3</sup>

Attorney Webb testified next. He explained that he was hired by Cannady’s family “for the purpose of representing him to secure a better plea outcome from the State.” He testified that Cannady all along maintained the police reports were inaccurate in that he never dropped the

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<sup>3</sup> On cross-examination, Cannady testified that he knew one of his friends was cooperating with police and had made an incriminating statement against him but he claimed that he did not know the other friend made a statement.

magazine for the gun, inserted it, walked toward S.C., and shot her. According to Attorney Webb, Cannady did not say that the primary reason for pleading guilty was that he did not want to testify at trial that his two friends also fired guns that day or that he was unaware that his friends had made statements against him or that he was protecting them.

Attorney Webb further testified that Cannady was never happy about pleading guilty, but he also did not want to go to trial. Attorney Webb was aware of the statement that Cannady intended to read to the court and testified that he explained to Cannady that when he took the plea deal he made a “business decision” to go forward to limit his exposure. He wanted to go through with sentencing, but only with the chance to present his own version of the events that transpired. Cannady made a business decision, in Attorney Webb’s view, because the best trial outcome was second-degree reckless homicide—no better than the plea bargain—and maybe even first-degree intentional with the wrong set of jurors. Attorney Webb testified that he explained to Cannady he would have to withdraw as trial counsel unless Cannady proceeded to sentencing.

The circuit court denied the motion after concluding that Cannady understood the elements of the crime to which he pled and made a business decision to get the best deal possible. The circuit court concluded Cannady was not a credible witness compared to Attorney Webb. The circuit court found Cannady wanted the best deal he could get, even if that meant giving up his self-defense claim. The circuit court went on to impose a global sentence totaling thirty years of incarceration and eleven years of extended supervision.

### *Discussion*

Cannady appeals the circuit court’s denial of his plea withdrawal motion. A defendant seeking to withdraw a plea before sentencing bears the burden of showing by a preponderance of the evidence that there is a fair and just reason for withdrawal.<sup>4</sup> *State v. Jenkins*, 2007 WI 96, ¶32, 303 Wis. 2d 157, 736 N.W.2d 24. To be “fair and just,” the reason must be more than a defendant’s change of mind and desire to have a trial. See *State v. Canedy*, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991). Fair and just reasons for plea withdrawal include a genuine misunderstanding of the plea’s consequences, haste and confusion in entering the plea, and coercion by counsel. *State v. Shimek*, 230 Wis. 2d 730, 739, 601 N.W.2d 865 (Ct. App. 1999).

The decision to permit plea withdrawal prior to sentencing is committed to the sound discretion of the circuit court. *Jenkins*, 303 Wis. 2d 157, ¶30. We will uphold the court’s discretionary decision if “the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach.” *Id.* (citation omitted). The court’s findings of fact, including its credibility determinations, will be upheld unless they are clearly erroneous. *Id.*, ¶¶33, 46.

Cannady contends that he demonstrated a fair and just reason for plea withdrawal: his repudiation of the factual basis for the pleas.<sup>5</sup> He points to his assertion of innocence, namely,

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<sup>4</sup> If the defendant makes this showing, then the burden shifts to the State to show that the prosecution would be substantially prejudiced. See, e.g., *State v. Lopez*, 2014 WI 11, ¶¶61-62, 353 Wis. 2d 1, 843 N.W.2d 390. We need not reach the issue because we conclude that the circuit court properly determined that Cannady failed to show a fair and just reason justifying plea withdrawal.

<sup>5</sup> On appeal, Cannady is not pursuing his “discovery” that his friends made statements to the police as grounds for plea withdrawal.

his contention that S.C. died as she seized his gun from its holster and they struggled over it. Additionally, Cannady contends he outright denied having anything to do with the injuries to B.M.Z. and A.M., speculating that they were probably shot after he left the scene. He additionally asserts that evidence of confusion regarding the significance of his prepared statement to the circuit court at the aborted sentencing hearing and pressure from counsel also exist.

Cannady argues that when the opportunity arose at sentencing, he rejected the complaint as a factual basis.<sup>6</sup> However, the transcript of the plea hearing reflects that when the circuit court asked him whether “the criminal complaint is true and accurate with the exception of some of the statements that have been attributed to you,” Cannady answered, “Yes.” Moreover, at the sentencing hearing before Cannady moved to withdraw his pleas, at one point, he admitted that he “was the person who last had the firearm” when it went off, killing S.C., and that he was no longer acting in self-defense at the time. Cannady stated: “Could I have stopped? Yes.” Further, at the hearing on Cannady’s plea withdrawal motion, the prosecutor asked Cannady if his version of events was that “you shoot [S.C.] and the two young women, you get into the driver’s seat of the white car, you leave, then the two guys that are in the car with you, they drive your car back and use your gun to shoot into the house.” The prosecutor asked, “Do I have that right?” Cannady answered, “Yes.”

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<sup>6</sup> Additionally, in his opening brief, Cannady argued that he should be allowed to withdraw his guilty pleas because at the plea hearing, the circuit court failed to ensure there was a factual basis. He relied on *State v. Lackershire*, 2007 WI 74, 301 Wis. 2d 418, 734 N.W.2d 23, *abrogated on other grounds by State v. Straszowski*, 2008 WI 65, 310 Wis. 2d 259, 750 N.W.2d 835. In its response, the State aptly distinguished the circumstances in *Lackershire* from those presented here and further analysis on this point is not required.

To the extent that Cannady claims he should be allowed to withdraw his guilty pleas because when he entered them, he did not know self-defense was available, we are unconvinced. He contends that he did not know that a self-defense claim was available until the circuit court at the first sentencing hearing suggested that it sounded like he was acting in self-defense. However, at the hearing on his plea withdrawal motion, Cannady testified that before he entered his guilty pleas, he had discussed self-defense with Attorney Webb and knew that he had a potential self-defense claim that he could have used at trial. After hearing Cannady's testimony, the circuit court found that Cannady knew he was giving up a claim of self-defense by pleading guilty. Then, after pleading guilty, "[a]t some point he changed his mind and wanted to withdraw his plea[.]"

The circuit court properly exercised its discretion in denying Cannady's presentence motion for plea withdrawal. The court made factual findings that were supported by the record and were not clearly erroneous. Insofar as Cannady suggests that in denying his plea withdrawal motion, the circuit court excessively focused on the plea colloquy, the record belies this claim. The plea colloquy was but one factor in the circuit court's analysis. In addition to the plea-hearing transcript, the transcript from the plea-withdrawal hearing reflects that the circuit court's decision hinged heavily on its credibility determinations. *See Jenkins*, 303 Wis. 2d 157, ¶34 ("If the circuit court does not believe the defendant's asserted reasons for withdrawal of the plea, there is no fair and just reason to allow withdrawal of the plea." one set of quotation marks and citation omitted).

In this regard, at the plea-withdrawal hearing, the circuit court stated: "I didn't find Mr. Cannady all that credible on the witness stand." In contrast, the circuit court found Attorney Webb "to be extremely credible," and to have "made a ton of sense." The circuit court



continued: “Attorney Webb basically said over and over this is really a business decision on Mr. Cannady’s part.” The circuit court found that Cannady “said to Attorney Webb over and over, quote, I don’t want to play with these people and, I’m assuming too that he meant the system and the court system,” or the prosecutor.

The circuit court applied the correct legal standard to the facts of record, explained its rationale, and reached a reasonable result when it denied Cannady’s motion. This constitutes a proper exercise of discretion.<sup>7</sup>

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*

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<sup>7</sup> Because we affirm on this basis, we will not delve into the State’s forfeiture argument as a basis for affirming. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (we decide cases on the narrowest possible grounds).