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**DISTRICT III**

July 30, 2013

To:

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Outagamie County Justice Center  
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You are hereby notified that the Court has entered the following opinion and order:

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2013AP664

State of Wisconsin v. Richard J. Gravelle (L. C. #2010CM449)

Before Hoover, P.J.<sup>1</sup>

Richard Gravelle, pro se, appeals an order denying his WIS. STAT. § 974.06 motion for postconviction relief. Gravelle was convicted of fourth-degree sexual assault as a repeater. *See* WIS. STAT. § 940.225(3m).<sup>2</sup> In his § 974.06 motion, Gravelle sought, in part, to withdraw his

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

<sup>2</sup> WISCONSIN STAT. § 940.225(3m) provides: "FOURTH DEGREE SEXUAL ASSAULT .... [W]hoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor."

plea because he alleged he did not understand the elements of the offense. Specifically, Gravelle alleged he did not understand the State would have to prove his sexual contact was for the purpose of sexual gratification or the victim's humiliation. *See* WIS. STAT. § 940.225(5)(b). The circuit court found Gravelle understood the sexual contact element and denied Gravelle's § 974.06 motion.

On appeal, Gravelle renews his argument that he is entitled to plea withdrawal. In response, the State concedes that, after reviewing the case law, it "is unable ... to make a good faith argument that it met its burden of proving by clear and convincing evidence that Gravelle understood the sexual contact element of the offense." The State "agrees that Gravelle is entitled to withdraw his plea[]," and it asks us to "vacate the judgment of conviction and reverse the order denying postconviction relief and remand for further proceedings."

Based on the State's concession, and because we cannot abandon our neutrality to develop arguments for the State, *see State v. Pettit*, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992), we summarily reverse the order denying postconviction relief, vacate Gravelle's judgment of conviction, and remand for further proceedings.

Therefore,

IT IS ORDERED that the court's order denying postconviction relief is summarily reversed, the judgment of conviction is vacated, and the case is remanded for further proceedings.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*