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December 10, 2013

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

2012AP2709-CR	State of Wisconsin v. Aman Deep Singh (L.C. # 2011CF4004)
2012AP2710-CR	State of Wisconsin v. Aman Deep Singh (L.C. # 2011CF4192)

Before Blanchard, P.J., Higginbotham and Sherman, JJ.

Aman Deep Singh, pro se, appeals a circuit court order denying Singh's motion to withdraw his guilty pleas and an order denying Singh's motion for reconsideration. 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 (2011-12)¹ We summarily affirm.²

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

Pursuant to a plea agreement, Singh pled guilty to two felony counts of obtaining a controlled substance by misrepresentation and one misdemeanor count of obtaining a prescription drug by fraud. After sentencing, Singh moved to withdraw his pleas. Singh argued that: (1) the circuit court's plea colloquy was deficient because it did not establish Singh's understanding of the elements of the charges, and Singh did not in fact possess that information; (2) Singh's trial counsel was ineffective by pressuring Singh to accept the plea agreement, failing to explain the elements of the charged crimes to Singh, and failing to properly advocate for Singh at sentencing; and (3) the circuit court lacked subject matter jurisdiction over the misdemeanor charge because attempt to obtain a prescription drug by fraud is a non-existent crime. The circuit court denied Singh's motion to withdraw his pleas without a hearing, and also denied Singh's subsequent motion for reconsideration.

Singh argues that he is entitled to a hearing on his postconviction motion under *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). He asserts that he identified a defect in the plea colloquy and alleged that he did not understand the information that should have been provided. See *State v. Howell*, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48 (a motion for plea withdrawal requires an evidentiary hearing if it makes a prima facie showing that the plea colloquy was deficient and alleges that the defendant did not in fact know or understand the information that should have been provided). Specifically, Singh contends that the circuit court

² Singh has moved for summary disposition, arguing that we should summarily reverse because Singh argued in his appellant's brief that one of the offenses charged was ambiguous and the State did not address that argument in its brief. Singh contends the issue has been conceded.

We reject this argument for two reasons. First, Singh's argument that one of the charges was ambiguous was not sufficiently developed to require a response. See *State v. Flynn*, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994). Second, as we explain below, we reject this argument on its merits. Accordingly, we deny Singh's motion for summary reversal.

failed to establish Singh’s understanding of any of the elements of the charged offenses. Singh argues that the circuit court failed to explain “attempt,” “forgery,” “controlled substance,” or “prescription drug,” and failed to explain the mental state requirements of the charges. Singh contends he sufficiently alleged that he did not know or understand the elements of the offenses.

We conclude that the circuit court sufficiently established Singh’s understanding of the nature of the charges, and thus Singh has not made a prima facie showing of a defect in the plea colloquy. A circuit court is required to “inform the defendant of the charge’s nature or, instead, to ascertain that the defendant in fact possesses such information.” *State v. Trochinski*, 2002 WI 56, ¶20, 253 Wis. 2d 38, 644 N.W.2d 891. However, a circuit court is not required “thoroughly to explain or define every element of the offense to the defendant.” *Id.* Accordingly, “a valid plea requires only knowledge of the elements of the offense, not a knowledge of the nuances and descriptions of the elements.” *Id.*, ¶29.

Here, the circuit court established Singh’s understanding of the elements of the offenses by conducting the following colloquy with Singh:

THE COURT: Do you understand you’re charged ... with obtaining a controlled substance by misrepresentation ... ?

THE DEFENDANT: Yes.

....

THE COURT: Do you understand you’re charged ... with obtaining a prescription drug by fraud?

THE DEFENDANT: Yes.

....

THE COURT:

Have you talked to your lawyer about what the State would have to prove before you could be found guilty of each of these offenses?

THE DEFENDANT: Yes, we have.

THE COURT: Do you understand what the State would have to prove?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand that in ... obtaining a controlled substance by misrepresentation ..., the State would have to prove that on July 25th of 2011 at 6241 South Packard Avenue in the City of Cudahy, Wisconsin that you obtained possession of oxycodone by forgery?

THE DEFENDANT: Yes.

THE COURT: And as to ... obtaining prescription drug by fraud ... the State would have to prove that on August 23rd of 2011 at 6241 South Packard Avenue in the City of Milwaukee, Wisconsin you attempted to obtain metoprolol, a prescription drug, by forgery?

THE DEFENDANT: Yes, I do.

THE COURT: And as to [the other charge of obtaining a controlled substance by misrepresentation] ... the State would have to prove that on August 10th of 2011 at 5800 South 108th Street in the Village of Hales Corners, Wisconsin you obtained possession of oxycodone, a controlled substance, by forgery?

THE DEFENDANT: Yes.

....

THE COURT: Do you understand what the State would have to prove before you could be found guilty of each of these offenses?

THE DEFENDANT: Yes, I do.

THE COURT: Do you understand what the complaint says that you did?

THE DEFENDANT: Yes.

....

THE COURT: [Defense counsel, are you] satisfied he understands the elements of the offense ...?

[DEFENSE COUNSEL]: Yes, Your Honor.

Thus, the circuit court established Singh's knowledge of the elements of the offenses to which he was pleading. See WIS. STAT. §§ 961.43(1)(a) and 450.11(7)(a). Singh argues that the circuit court should have defined the elements and explained the mental state requirements. However, the circuit court was not required to do so. See *Trochinski*, 253 Wis. 2d 38, ¶¶18, 29. Accordingly, Singh has not identified a defect in the plea colloquy and thus has not met the first prong of *Bangert* to warrant a motion hearing. See *Id.*, ¶17.

Singh also contends that the circuit court erred by applying the wrong legal standard to his motion to withdraw his plea. Singh contends that the circuit court denied his motion without a hearing because he asserted only a conclusory allegation that he did not understand the elements of the offenses. Singh argues that the court applied the stricter test for specific allegations of a lack of understanding under *State v. Nelson*, 54 Wis. 2d 489, 195 N.W.2d 629 (1972), and that a conclusory allegation was sufficient under *Bangert*.

First, as we have explained, Singh's motion failed on the first prong of *Bangert* because Singh did not identify a defect in the plea colloquy. The circuit court, as well, explained that Singh's motion did not identify a defect in the plea colloquy, and that Singh's *Bangert* motion was denied for that reason. Second, the court cited *Nelson* after noting that Singh's postconviction counsel had previously filed a motion for plea withdrawal on Singh's behalf that included a claim of ineffective assistance of counsel. The court noted that it had denied Singh's claim of ineffective assistance of counsel because Singh had not stated specifically what he did not understand about the elements. Accordingly, the court's statement of the *Nelson* standard

reiterated that Singh's motion, in addition to failing to require a hearing under *Bangert*, failed to require a hearing under *Nelson*.

Finally, Singh contends that the record is ambiguous as to whether he was convicted of "attempt to obtain a prescription drug by forgery" or "obtaining a prescription drug by fraud." He points out that the complaint, information, and plea colloquy use both phrases. However, WIS. STAT. § 450.11(7)(a) provides that "[n]o person may *obtain or attempt to obtain* a prescription drug ... by fraud" (Emphasis added.) Thus, both acts are prohibited by the same statute. Here, the phrase "obtaining prescription drug by fraud" appears as the title of the count charged in the complaint and information as a shorthand name for the offense under § 450.11(7)(a), and the circuit court used the same phrase in naming the charge. However, the facts stated in the complaint, information and plea colloquy make clear that Singh was specifically charged with and pled guilty to *attempting* to obtain a prescription drug by fraud. We discern no ambiguity of the charged offense on this record. We affirm.³

Therefore,

³ To the extent Singh made additional arguments in his postconviction motions in the trial court that he does not pursue in his appellant's brief, we deem those arguments abandoned. *See Reiman Assocs., Inc. v. R/A Adver., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981) (issues that are not briefed on appeal will be deemed abandoned). Also, to the extent Singh raises issues for the first time in his reply brief, we do not address those arguments. *See Swartwout v. Bilsie*, 100 Wis. 2d 342, 346 n.2, 302 N.W.2d 508 (Ct. App. 1981) (as a general rule, we do not address arguments raised for the first time in the reply brief).

IT IS ORDERED that the orders are summarily affirmed pursuant to WIS. STAT. RULE
809.21.

Diane M. Fremgen
Clerk of Court of Appeals