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DISTRICT IV

October 15, 2015

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

2014AP669-CR State of Wisconsin v. Latasha K. Gatlin (L.C. # 2012CF320)

Before Lundsten, Higginbotham and Blanchard, JJ.

Latasha Gatlin appeals an order that denied her postconviction motion for plea withdrawal without holding an evidentiary hearing. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).[1] We affirm for the reasons discussed below.

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Gatlin was released on bond while awaiting trial on two separate child abuse cases in Dane County. The original bond conditions required Gatlin not to leave Dane County without court approval and to file written notice with the court clerk within 48 hours of any change of address. The bond conditions were subsequently modified to allow Gatlin to reside with her aunt and grandmother at a specific address in Milwaukee. At some point, however, the grandmother became upset and ordered Gatlin to leave the residence. Gatlin moved to a hotel in Milwaukee that day, and contacted her attorney the following day to tell the attorney that Gatlin needed to find a new residence. Gatlin stayed at the hotel for about two weeks, until a social worker helped her to find an apartment in Milwaukee. Gatlin notified both her attorney and another social worker about her new address.

Over a month after filing a change of address form with the post office, Gatlin filed a motion to modify her bond conditions, alleging that she found it "increasingly difficult, uncomfortable, and unsafe to continue living at her current address," and that she had "found an apartment in Milwaukee … and she would like to move there." At the bond hearing, without advising the court that Gatlin had already moved, counsel told the court that Gatlin was "*proposing* to move from the address that was given to another address in Milwaukee, which she doesn't want to be made public because she's been harassed by the father of some of her children, and she's really worried about her personal safety." (Emphasis added.) The court stated that it did not know how to respond without even knowing what the new proposed address was. On this basis, the court denied Gatlin's motion to move to a new address in Milwaukee, but indicated that it would be willing to revisit the matter if the parties were to reach and submit a stipulation. No such stipulation was ever presented.

Several months later, two Madison Police Department detectives traveled to Milwaukee to attempt to locate Gatlin. They went first to the grandmother's house, and were informed that Gatlin did not live there. They then went to the address provided on Gatlin's change of address form to the post office, where a female who refused to answer the door and claimed not to know Gatlin. The State then charged Gatlin with four counts of bail jumping. Two of the counts were based upon Gatlin changing her residence without prior court approval, and the other two were based upon Gatlin's failure to provide written notice to the clerk of court about her change of residence.

Gatlin eventually entered a plea to one of the bail jumping counts (involving failure to obtain prior approval) in exchange for the dismissal of the other three counts and the State's agreement to make a joint recommendation for a one-year sentence to be served concurrently with the sentences on the child abuse charges. The circuit followed the joint recommendation of the parties on sentencing. However, Gatlin subsequently moved to withdraw her plea on the grounds that counsel erroneously informed her that she had no defense to the bail jumping charges because she had not provided written notice to the court[2]; she alleged that there were a number of facts that would have supported a claim that Gatlin lacked intent to violate this bond condition. Those alleged facts included that she had told counsel about the move; that counsel had in the past followed through on getting bond conditions changed for her; and that Gatlin had a documented history of limited cognitive abilities. The circuit court denied Gatlin's plea withdrawal motion following oral argument, without taking evidence.

[2] Gatlin also raised a competency issue, but does not pursue that on appeal, aside from its relation to her ability to understand her bond conditions.

In order to obtain a hearing on a postconviction motion, a defendant must allege material facts sufficient to warrant the relief sought. ***State v. Allen***, 2004 WI 106, ¶¶9, 36, 274 Wis. 2d 568, 682 N.W.2d 433. In the context of a claim of ineffective assistance of counsel, that means the facts alleged would, if true, establish both that counsel provided deficient performance and that the defendant was prejudiced that performance. ***State v. Swinson***, 2003 WI App 45, ¶58, 261 Wis. 2d 633, 660 N.W.2d 12. No hearing is required, though, when the defendant presents only conclusory allegations or when the record conclusively demonstrates that he or she is not entitled to relief. ***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972). Non-conclusory allegations should present the "who, what, where, when, why, and how" with sufficient particularity for the court to meaningfully assess the claim. ***Allen***, 274 Wis. 2d 568, ¶23.

Here, the circuit court determined that Gatlin was not entitled to an evidentiary hearing on her claim that counsel misinformed her about a potential lack-of-intent defense. The court reasoned, "I don't know that I get to the defenses that would have been offered at trial when I'm looking at whether or not she was fairly convicted on her plea," and concluded that any defenses were waived by the plea. The court's reasoning misses the fundamental point that any waiver of rights by a plea must be knowingly, voluntarily, and intelligently made. In other words, if defense counsel did, in fact, erroneously advise Gatlin that she did not have any potential defense to the bail jumping charges when, in fact, she did have a potential defense to the charges, Gatlin's allegations that she would not have entered her plea with a proper understanding of her potential defense could be sufficient to warrant an evidentiary hearing.

The real problem with Gatlin's plea withdrawal motion is that her alleged misunderstanding does not affect two of her four felony bail jumping charges, including the one

she pled to. Gatlin's assertion that she believed she could not be convicted of bail jumping because she told her attorney about her change of address and, thus, believed she did not need to provide written notice because counsel would inform the clerk on her behalf, addresses only the two failure-to-provide-notice charges. It does not address the two bail jumping counts alleging that she *failed to obtain prior approval* to move. Moreover, both counts alleging that Gatlin failed to provide notice were dismissed.

Gatlin entered her plea to one of the two charges that she violated her bond conditions by failing to obtain *prior approval* from the court before moving. The record conclusively shows that, not only did Gatlin fail to obtain the court's permission before she moved, the court also explicitly denied Gatlin permission to move after she had already done so. Nothing in the plea withdrawal motion provides a basis to believe that any information counsel provided Gatlin about a possible defense to the two bail jumping charges involving notice *after* moving did or could have affected Gatlin's understanding that she also needed to get prior court approval *before* moving. Moreover, Gatlin was certainly violating the conditions of her bond by residing at the new Milwaukee address after the court denied her request to do so.

Because Gatlin's allegations in her plea withdrawal motion do not establish that she had any potential defense to the two bail jumping charges involving prior approval, they do not provide any plausible basis to believe that she would not have entered a plea to one of those charges, even assuming that it is true that she was erroneously informed that she had no defense to the other two charges involving notice. The plea deal dismissed the second prior approval charge to which Gatlin had no defense, limiting her sentence exposure, and resulted in no additional time served beyond her sentences on other charges. We therefore conclude the record

conclusively demonstrates that Gatlin was not entitled to relief, and no evidentiary hearing was required.

IT IS ORDERED that the order denying Gatlin's postconviction motion for plea withdrawal is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals