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DISTRICT IV

August 9, 2016

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

2015AP2369-CR	State of Wisconsin v. Desmond Deon Shaw, Sr. (L.C. # 2012CF1411)
2015AP2370-CR	State of Wisconsin v. Desmond Deon Shaw, Sr. (L.C. # 2012CF2621)
2015AP2371-CR	State of Wisconsin v. Desmond Deon Shaw, Sr. (L.C. # 2013CF1698)
2015AP2372-CR	State of Wisconsin v. Desmond Deon Shaw, Sr. (L.C. # 2014CF184)

Before Kloppenburg, P.J., Lundsten, and Blanchard, JJ.

Desmond Shaw appeals judgments of conviction entered in four cases, as well as an order denying his motion for plea withdrawal. Based upon our review of the briefs and records, we conclude at conference that these cases are appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21 (2013-14).[1]

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

Shaw pled guilty to six counts of felony bail jumping, one count of substantial battery, and one count of manufacture and delivery of THC. After sentencing, Shaw moved to withdraw his plea. The circuit court denied the motion without a hearing. Shaw now appeals.

On appeal, Shaw renews the argument, first made in his motion for plea withdrawal, that the court's plea colloquy was defective. Specifically, Shaw makes two arguments: that the court failed to make an express finding that there were factual bases for the pleas, and that the court never expressed its satisfaction on the record that Shaw entered his pleas knowingly, voluntarily, and intelligently.

The State correctly classifies Shaw's arguments as claims under ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), because they allege defects in the plea colloquy. "The ***Bangert*** requirements exist as a framework to ensure that a defendant knowingly, voluntarily, and intelligently enters his plea." ***State v. Cross***, 2010 WI 70, ¶32, 326 Wis. 2d 492, 786 N.W.2d 64. We do not embrace a formalistic application of those requirements. ***Id.*** Nor do we require "magic words or an inflexible script." ***State v. Hampton***, 2004 WI 107, ¶43, 274 Wis. 2d 379, 683 N.W.2d 14.

Here, the transcripts of the two plea hearings satisfy us that the circuit court's personal colloquy with Shaw was not defective. At the first hearing, the terms of the plea agreement were stated in open court. Shaw agreed to plead guilty to eight counts, with other counts to be dismissed and read in. The court directed Shaw to the criminal complaints, beginning with the complaint in Case No. 2013CF1644, which alleged three counts of bail jumping. The court asked Shaw if he had read the complaint, and Shaw responded in the affirmative. The court then

asked Shaw if he believed what the complaint said and whether it was true and correct. At that point, Shaw asked to speak with his attorney and the court permitted him to do so. The State offered to dismiss count one and have Shaw plead guilty to counts two and three of that complaint, based on a disputed fact alleged in count one. Shaw agreed to proceed in that manner. The court confirmed on the record with Shaw that he had reviewed the criminal complaint, conferred with his attorney, and understood the complaint with respect to the remaining two bail jumping counts in Case No. 2013CF1644.

The court then moved on to the next complaint, but Shaw's attorney requested a continuance to give Shaw an additional opportunity to review the criminal complaints. The court granted the request. The court continued the plea hearing two weeks later and resumed its personal colloquy with Shaw. The court went through each complaint and identified the counts to which Shaw would be pleading. The court confirmed on the record with Shaw that each complaint was substantially true and correct as to the relevant charges.

Shaw argues that the circuit court was required to make an express finding that it was satisfied that there were factual bases for the charges. We are not persuaded by this argument. There is "no authority for the proposition that WIS. STAT. § 971.08(1)(b) requires a judge to make a factual basis determination in one particular manner or prohibits a judge from utilizing the complaint for that purpose." ***State v. Black***, 2001 WI 31, ¶12, 242 Wis. 2d 126, 624 N.W.2d 363. Here, although the court did not make an express finding that there was a factual basis for the pleas, the basis is established through the court's personal colloquy with Shaw and utilization of the complaints.

Shaw also argues that the circuit court was required to state expressly on the record that he entered his pleas knowingly, voluntarily, and intelligently. We reject this argument because, as discussed above, there are no "magic words" for ensuring that a defendant's plea is knowingly, voluntarily, and intelligently entered. *See* ***Hampton***, 274 Wis. 2d 379, ¶43.

Moreover, our review of the plea hearing transcripts satisfies us that the circuit court did, in fact, ascertain through its colloquy with Shaw that he understood the elements of the crimes to which he pled. The court reviewed the criminal complaints with Shaw and confirmed that he understood the charges. At the first hearing, the court explained the constitutional rights that Shaw was giving up by entering a plea and confirmed with Shaw that he understood the consequences of his pleas. At the second hearing, the court asked Shaw if he wanted the court to review those rights again. Shaw declined the opportunity to go over them again and stated, "I remember and I understand." Shaw also provided the court with signed plea questionnaires that contained terms of the proposed plea agreement. The questionnaires had the jury instructions for each offense attached. Shaw indicated to the court that he signed the questionnaires and had adequate time to go over them with his attorney. *See* ***State v. Hoppe***, 2008 WI App 89, ¶15, 312 Wis. 2d 765, 754 N.W.2d 203 (plea questionnaire becomes part of the colloquy, potentially satisfying the court's obligations under WIS. STAT. § 971.08). We are satisfied, in light of all of the above, that the court ascertained on the record that Shaw understood the elements of the crimes to which he was pleading and that his plea was knowing, voluntary, and intelligent. Therefore, the circuit court properly concluded that Shaw was not entitled to a hearing on his motion for plea withdrawal.

IT IS ORDERED that the judgments and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals