



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

October 5, 2016

To:

Hon. Bernard Ben Bult
Circuit Court Judge
Marquette County Courthouse
P. O. Box 187
Montello, WI 53949

Hon. Richard O. Wright
Circuit Court Judge
Marquette County Courthouse
P.O. Box 187
Montello, WI 53949

Shari Rudolph
Clerk of Circuit Court
Marquette County Courthouse
P.O. Box 187
Montello, WI 53949

Chad A. Hendee
District Attorney
P. O. Box 396
Montello, WI 53949-0396

Leonard D. Kachinsky
Kachinsky Law Offices
832 Neff Ct.
Neenah, WI 54956-0310

Nancy A. Noet
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

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

2016AP110-CR

State of Wisconsin v. Kieffer L. Michel (L.C. # 2012CF98)

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

Kieffer Michel appeals a judgment of conviction entered upon his no contest plea to two counts of homicide by use of a motor vehicle while under the influence of a controlled substance, as well as an order denying his postconviction motion for plea withdrawal. *See* WIS. STAT. § 940.09(1)(am) (2011-12).¹ Based upon our review of the briefs and record, we conclude at

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

conference that this case is appropriate for summary disposition. We summarily affirm. *See* WIS. STAT. RULE 809.21.

Michel argues on appeal that the plea colloquy conducted by the circuit court was inadequate and that he was entitled to an evidentiary hearing on his postconviction motion for plea withdrawal. A motion for plea withdrawal “warrants an evidentiary hearing if (1) the motion makes ‘a *prima facie* showing that [the] plea was accepted without the [circuit] court's conformance with [Wis. Stat.] § 971.08 or other mandatory procedures,’ and if (2) the motion alleges that in fact the defendant did not know or understand the information that should have been provided at the plea colloquy.” *State v. Howell*, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48 (footnote omitted) (quoting *State v. Bangert*, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986)). Whether a postconviction motion alleges sufficient facts on its face that, if true, would entitle the defendant to relief, is a question of law that we review de novo. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

Here, Michel's postconviction motion for plea withdrawal alleges, consistent with *Bangert*, that the circuit court did not ascertain personally with Michel that he understood the elements of the offenses to which he was pleading. *See State v. Bangert*, 131 Wis. 2d 246, 266-67, 389 N.W.2d 12 (1986). We need not decide whether the circuit court's plea colloquy was deficient, however, because the postconviction motion lacks any allegation that Michel did not know or did not understand the information that he asserts was omitted from the colloquy. Therefore, the motion fails to satisfy the second prong required to make a *prima facie* showing under *Bangert*. *See id.* at 274.

On appeal, Michel quotes the following statement from his postconviction motion and argues that it makes clear that he did not understand the elements of the offenses: “A nineteen year old with no prior felony or OWI criminal justice experience would likely be confused by the repeated erroneous statements on the record.” We disagree that this or any other statement in the postconviction motion amounts to an allegation, as required under *Bangert*, that Michel did not understand the information that he claims was omitted from the plea colloquy. See *Bangert*, 131 Wis. 2d at 274. To speculate that a nineteen-year-old man would *likely* be confused under the circumstances is not the same thing as alleging that Michel, specifically, did not understand the elements of the offenses to which he was pleading. Accordingly, we conclude, as did the circuit court, that the postconviction motion lacks sufficient allegations to warrant a hearing and was properly denied.

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

Diane M. Fremgen
Clerk of Court of Appeals