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December 21, 2016

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

2016AP52-CR State of Wisconsin v. Randy A. Stephens (L.C. #2014CF258)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Randy A. Stephens appeals from a judgment of conviction and an order denying his motion for postconviction relief. He contends that the circuit court erred in denying his motion to withdraw his guilty plea. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2013-14).¹ We affirm the judgment and order of the circuit court.

¹ All references to the Wisconsin Statutes are to the 2013-14 version.

Stephens was convicted following a guilty plea to one count of armed robbery with use of force, as party to a crime. Under the terms of his plea agreement, the State agreed to “cap” its recommendation of initial confinement to no more than five years.

At his plea hearing, Stephens acknowledged the State’s agreement to cap its recommendation of initial confinement. He also acknowledged that he “face[d] any penalty up to the maximums allowed by law, no matter what anybody recommends or says,” and that the maximum term of imprisonment was forty years.

At sentencing, the State recommended a fifteen-year term of imprisonment, consisting of five years of initial confinement followed by ten years of extended supervision. The circuit court imposed a sixteen-year term of imprisonment, consisting of six years of initial confinement followed by ten years of extended supervision.

Stephens subsequently filed a motion to withdraw his guilty plea pursuant to *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). The motion alleged that the plea colloquy was defective because the circuit court failed to ensure that Stephens understood the potential punishment for his crime. The motion further alleged that Stephens erroneously believed that the maximum period of initial confinement was five years per the State’s recommendation.

Ultimately, the circuit court denied Stephens’ motion without an evidentiary hearing. The court concluded that Stephens had failed to show that the plea colloquy was defective. This appeal follows.

When a defendant seeks to withdraw a plea after sentencing, he or she must establish by clear and convincing evidence that refusal to allow withdrawal would result in a manifest

injustice. *State v. Taylor*, 2013 WI 34, ¶24, 347 Wis. 2d 30, 829 N.W.2d 482. One way to show a manifest injustice is to demonstrate that a plea was not knowing, voluntary, and intelligent. *Id.*

To help ensure that a defendant's plea is knowing, voluntary, and intelligent, the circuit court must perform certain statutory and court-mandated duties on the record during the plea hearing, including advising a defendant of the potential punishment if convicted. *Id.*, ¶¶30-31. If the defendant believes that the circuit court did not fulfill those duties, the defendant may seek plea withdrawal based on the alleged deficiencies in the plea colloquy pursuant to *Bangert Taylor*, 347 Wis. 2d 30, ¶32.

A defendant moving for plea withdrawal pursuant to *Bangert* must both (1) make a prima facie showing that the plea colloquy was defective because the circuit court failed to fulfill its duties and (2) allege that the defendant did not know or understand the information that should have been provided at the plea hearing. *Taylor*, 347 Wis. 2d 30, ¶32. If the defendant's postconviction motion fails to satisfy these requirements, the circuit court may deny the motion without an evidentiary hearing. See *State v. Brown*, 2012 WI App 139, ¶¶10-11, 345 Wis. 2d 333, 824 N.W.2d 916.

Here, we are satisfied that the circuit court properly advised Stephens of the potential punishment for his crime. As noted, through the court's colloquy, Stephens understood that he "face[d] any penalty up to the maximums allowed by law, no matter what anybody recommends or says," and that the maximum term of imprisonment was forty years.² Although Stephens later

² This information was also contained in Stephens' plea questionnaire and waiver of rights form, which the circuit court referenced during its plea colloquy.

alleged confusion as to the maximum period of initial confinement he faced, the circuit court was not required to provide that information at the plea hearing in order to fulfill its duties. *See State v. Sutton*, 2006 WI App 118, ¶24, 294 Wis. 2d 330, 718 N.W.2d 146 (a court need not make the maximum period of initial confinement explicit prior to accepting a plea). Because Stephens fails to show that his plea colloquy was defective, we conclude that the circuit court properly denied his motion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals