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May 10, 2017

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

2016AP1669-CR

State of Wisconsin v. Robb R. Neuens (L.C. #2014CF161)

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

Robb Neuens appeals from a judgment convicting him of felony bail jumping and from a circuit court order denying his postconviction motion to withdraw his no-contest 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 (2015-16).¹ We affirm.

Citing remarks made by the circuit court, Neuens filed a postconviction motion to withdraw his no-contest plea on the grounds that the circuit court coerced him into pleading no

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

contest. At a May 12, 2015 hearing, the circuit court observed that although it was not prejudging the case, Neuens apparently violated his bond, commented on the State's ability to prove the case, the maximum possible sentence if convicted, and the ability to avoid trial testimony that could figure negatively at sentencing. The court also mentioned the role other acts evidence could play at trial and at sentencing. The court stated that it did not know the details of the plea offer. Without foreshadowing how sentencing would proceed, the court made clear that it decides the sentence.

At an August 17, 2015 hearing, the circuit court acknowledged that the parties had not reached a plea agreement and made comments similar to the remarks made on May 12. After confirming that Neuens wanted a trial, the court again noted the risks of going to trial, acknowledging that the decision belonged to Neuens.

On November 3, 2015, Neuens pled no contest.

On August 1, 2016, Neuens moved to withdraw his no-contest plea because he believed that the State could not prove that he violated the terms of his bond by having contact with a victim in the underlying criminal case. Neuens alleged that he felt coerced into a plea because the circuit court suggested that he would likely lose at trial and he would experience consequences for going to trial.

The circuit court denied Neuens's plea withdrawal motion without an evidentiary hearing. Neuens did not demonstrate a manifest injustice warranting plea withdrawal. The court concluded that the plea colloquy was "textbook" and intended to confirm that Neuens understood the charge, penalties, elements and consequences of his no-contest plea. The court found that Neuens's allegations were conclusory and unsupported in the record.

We will affirm the circuit court's discretionary decision to deny a plea withdrawal motion without a hearing if the record conclusively shows that the defendant was not entitled to relief. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433.

Relying largely upon *State v. Hunter*, 2005 WI App 5, 278 Wis. 2d 419, 692 N.W.2d 256, Neuens argues on appeal that the circuit court should have held an evidentiary hearing on his plea withdrawal motion. *Hunter* addresses judicial participation in the plea bargaining process. If a judge participates in that process, the resulting plea is conclusively presumed to be involuntary, and the defendant is entitled to withdraw the plea. *Id.*, ¶7.

The case that generated the “bright-line” rule barring judicial participation in plea negotiations, *State v. Williams*, 2003 WI App 116, ¶1, 265 Wis. 2d 229, 666 N.W.2d 58, supports our conclusion that the circuit court's comments in the case before us did not amount to participation in the plea negotiations. In *Williams*, the trial judge invited the parties to chambers to discuss the case, a plea agreement was reached with the self-described assistance or urging of the court, and during the time in chambers, the judge discussed possible dispositions and differing sentence ranges depending upon whether defendant was convicted at trial or upon a plea. *Id.*, ¶¶3-5. These actions by the trial judge constituted participation in the plea negotiations and were grounds for plea withdrawal. *Id.*, ¶22.

In contrast to the prohibited participation in *Williams*, the *Hunter* court makes clear that a circuit court may inquire if a plea has been discussed, may express its view of the strength of the case, and may advise the defendant to consider a plea, all without running afoul of the prohibition on participating in plea negotiations. *Hunter*, 278 Wis. 2d 419, ¶9. The court's

comments in the case were of the *Hunter* variety and did not constitute participation in plea negotiations.

Neuens's delay in seeking plea withdrawal on the grounds of coercion further undermines his coercion claim. In *Hunter*, the court noted a six-month lapse between the allegedly coercive circuit court comments and the entry of the plea. *Id.*, ¶¶14-15, 18. This delay persuaded the *Hunter* court that the circuit court's comments did not coerce a plea.

Here, the last set of allegedly coercive comments occurred in August 2015. Neuens pled no contest in November 2015, and he did not seek to withdraw his plea until August 2016. The passage of time undermines Neuens's claim that his no-contest plea was coerced.

We conclude that the record in this case conclusively demonstrates that the circuit court's comments did not constitute participation in plea negotiations. Therefore, the circuit court did not misuse its discretion when it denied Neuens's plea withdrawal motion without an evidentiary hearing.

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.

IT IS FURTHER ORDERED that this summary disposition order will not be published and may not be cited under WIS. STAT. RULE 809.23(3)(b).

Diane M. Fremgen
Clerk of Court of Appeals