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June 28, 2017

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

2016AP1063 State of Wisconsin v. Quintin A. Stallworth (L.C. #2007CF603)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Quintin A. Stallworth appeals pro se from orders denying his motions for postconviction relief and reconsideration. He seeks 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. *See* WIS. STAT. RULE 809.21 (2015-16).[1] We affirm the orders of the circuit court.

In 2009, Stallworth was convicted following a no contest plea to second-degree sexual assault of a child. The charge stemmed from allegations that he had sexual intercourse with a

[1] All references to the Wisconsin Statutes are to the 2015-16 version.

fifteen-year-old girl in his apartment. The circuit court sentenced him to ten years of initial confinement followed by ten years of extended supervision.

In 2016, Stallworth filed a motion for postconviction relief pursuant to WIS. STAT. § 974.06. In it, he sought to withdraw his plea based on claims that he received ineffective assistance of counsel and that the State failed to disclose favorable, material evidence. Specifically, Stallworth complained that, at the time of his plea, he was unaware that the victim had been diagnosed with Asperger's syndrome. He faulted counsel for not investigating the issue and accused the State of withholding evidence of the diagnosis.

The circuit court summarily denied the motion, noting that (1) the presentence investigation report included a statement from the victim's mother indicating that the victim had Asperger's syndrome; and (2) defense counsel told the court at sentencing that Stallworth "had an opportunity to read the whole [p]resentence and we discussed it together as well." Stallworth filed a motion for reconsideration, which the court also denied. This appeal follows.

On appeal, Stallworth contends that the circuit court erred in denying his motions for postconviction relief and reconsideration. He renews the claims made in them and asserts that he is entitled to plea withdrawal.

A defendant who seeks to withdraw a plea after sentencing must establish by clear and convincing evidence that withdrawal is necessary to avoid a manifest injustice. *See* ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. There are multiple ways that a defendant can meet this burden.

One way to establish a manifest injustice is to demonstrate that the defendant received ineffective assistance of counsel. ***State v. Dillard***, 2014 WI 123, ¶84, 358 Wis. 2d 543, 859 N.W.2d 44. This requires the defendant to show both that counsel's performance was deficient and that the deficiency prejudiced the defendant. ***Id.***, ¶85.

A manifest injustice also occurs if the State withholds favorable, material evidence from the defendant. *See* ***State v. Harris***, 2004 WI 64, ¶39, 272 Wis. 2d 80, 680 N.W.2d 737. The State has a constitutional obligation to disclose such evidence. *See* ***Brady v. Maryland***, 373 U.S. 83, 87 (1963).

Whether the defendant received ineffective assistance of counsel and whether the State violated its constitutional obligation to disclose favorable, material evidence are questions of constitutional fact. *See* ***Dillard***, 358 Wis. 2d 543, ¶86; ***Harris***, 272 Wis. 2d 80, ¶11. When reviewing questions of constitutional fact, we accept the circuit court's findings of historical fact unless clearly erroneous, but independently apply constitutional principles to those facts. ***State v. Tullberg***, 2014 WI 134, ¶27, 359 Wis. 2d 421, 857 N.W.2d 120.

Here, we are not persuaded that Stallworth has shown that he received ineffective assistance of counsel. His allegations on the matter are conclusory, and he does not explain why knowledge of the victim's diagnosis of Asperger's syndrome would have altered his decision to plead no contest. *See* ***State v. Bentley***, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996) (to show prejudice in the context of a request for plea withdrawal, a defendant must demonstrate that, but

for counsel's errors, there is a reasonable probability that he or she would not have entered a plea and would have insisted on going to trial).[2]

Likewise, we are not persuaded that the State withheld favorable, material evidence from Stallworth. On its face, knowledge of the victim's diagnosis of Asperger's syndrome does not appear to be exculpatory or impeachment evidence. Even if it were, such information was already known to the defense via the presentence investigation report and therefore not in the exclusive possession of the State. *See* ***State v. Sarinske***, 91 Wis. 2d 14, 36, 280 N.W.2d 725 (1979) ("***Brady*** requires production of information which is within the exclusive possession of state authorities."). Accordingly, we are satisfied that the circuit court properly denied Stallworth's motions.[3]

Upon the foregoing reasons,

IT IS ORDERED that the orders 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 except as provided under WIS. STAT. RULE 809.23(3).

Diane M. Fremgen
Clerk of Court of Appeals

[2] As noted by the State, knowledge of the victim's diagnosis would not have impacted the strong evidence of Stallworth's guilt. This evidence included (1) a recorded call between the victim and Stallworth in which Stallworth admitted he was scared the victim was pregnant; (2) the victim's positive identification of Stallworth's apartment as the location of the assault; and (3) Stallworth's flight to California when police attempted to interview him about the incident.

[3] To the extent we have not addressed an argument raised by Stallworth on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").