



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 II

November 8, 2017

To:

Hon. L. Edward Stengel
Circuit Court Judge
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Melody Lorge
Clerk of Circuit Court
Sheboygan County Courthouse
615 N. 6th St.
Sheboygan, WI 53081

Joel Urmanski
District Attorney
615 N. 6th St.
Sheboygan, WI 53081

Christopher G. Wren
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Steven M. Chavez, #582278
Kettle Moraine Corr. Inst.
P.O. Box 282
Plymouth, WI 53073-0282

Joseph N. Ehmann
Regional Attorney Manager
Wisconsin State Public Defenders
P.O. Box 7862
Madison, WI 53707-7862

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

2016AP1610-CR	State of Wisconsin v. Steven M. Chavez (L.C. #2013CF218)
2016AP1907-CR	State of Wisconsin v. Steven M. Chavez (L.C. #2013CF254)
2016AP1908-CR	State of Wisconsin v. Steven M. Chavez (L.C. #2013CF280)
2016AP1909-CR	State of Wisconsin v. Steven M. Chavez (L.C. #2013CF364)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Steven M. Chavez appeals from judgments of conviction and an order denying his postconviction motions. 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 summarily affirm.

In four separate cases, over a period of a little more than two months, Chavez was charged with ten felonies and one misdemeanor, all stemming from a domestic violence assault where he allegedly strangled and suffocated the mother of his children. Due to substitution and recusal requests filed by Chavez, the cases were reassigned several times, and ultimately Sheboygan County Circuit Court case No. 2013CF218 was assigned to Judge L. Edward Stengel in Branch I, and case Nos. 2013CF254, 2013CF280, and 2013CF364 were assigned to Judge James Bolgert in Branch V. During a combined arraignment and bond review hearing on June 10, 2013, Judge Stengel inquired whether the cases should be transferred so that all the cases were in one branch, and Chavez agreed. All the cases were assigned to Judge Stengel in Branch I.

Chavez reached a plea agreement in each case. At a combined plea hearing, he pled no contest to one count of disorderly conduct, domestic abuse; three counts of felony bail jumping; and one count of misdemeanor resisting/obstructing an officer.² The circuit court sentenced

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

² As a result of the plea agreement, the prosecutor filed an amended information in case No. 2013CF218, amending the strangulation and suffocation offense to a disorderly conduct domestic violence offense. The other charges were all dismissed, but read in.

Chavez at a combined sentencing hearing to a term of three years of probation with conditions on each count, concurrent for all cases, with four months of conditional jail time on case No. 2013CF364.

In August 2014, appellate counsel commenced a no-merit appeal in each case. This court identified potential issues of arguable merit concerning the plea-taking procedures and sought a supplemental no-merit report. After consulting with Chavez, counsel moved for dismissal of the no-merit appeal and sought an extension for filing a postconviction motion.

In November 2016, counsel filed a motion for postconviction relief in the circuit court seeking an order granting Chavez the right to withdraw his plea based on deficiencies in the plea colloquy. *See* WIS. STAT. § 971.08; *State v. Hoppe*, 2009 WI 41, ¶¶30-32, 317 Wis. 2d 161, 765 N.W.2d 794; *State v. Hampton*, 2004 WI 107, ¶¶20, 23, 274 Wis. 2d 379, 683 N.W.2d 14; *State v. Williams*, 2000 WI 78, ¶2, 236 Wis. 2d 293, 613 N.W.2d 132; *State v. Bangert*, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986). Chavez also filed his own motion to withdraw his plea, claiming he did not understand that the circuit court was not bound by the plea agreement and that he did not understand the constitutional rights he was waiving. Chavez filed an additional motion challenging the jurisdiction of the circuit court as he is “a Member of Pembina Little Shell Band.”

On March 10, 2016, the circuit court held an evidentiary hearing on the postconviction motions, with Chavez appearing pro se.³ The hearing focused on Chavez’s motion to withdraw his plea, and both Chavez and trial counsel testified. Chavez claimed, among other things, that he did not read the criminal complaints and did not understand the charges against him, he did not read the plea questionnaire before signing it, he was not informed of the constitutional rights he was giving up by entering a plea of no contest, he was not informed that the circuit court was not bound by the plea agreement, and he did not go over any of his rights with his attorney. The circuit court denied the plea-withdrawal motion, concluding that Chavez had failed to meet his burden to prove a manifest injustice. *See Bangert*, 131 Wis. 2d at 283. The court indicated that after reviewing the transcripts and the testimony, it was satisfied that Chavez was fully advised of the charges, the effect of the plea, and the maximum penalty he faced.⁴

On appeal, Chavez identifies five questions at issue in this case: (1) “[w]hat State Statute or law was followed [transferring] 13CF254; 13CF280; [and] 13CF364 cases from Branch 5 to Branch 1,” (2) did Branch 5 consent to the transfer, (3) did Chavez consent to the transfer, (4) is

³ On January 12, 2016, postconviction counsel sought to withdraw from the case, citing Chavez’s instruction “to withdraw immediately from representation in any of his cases.” Chavez responded by letter, stating that there was a “misunderstanding” and that he wished counsel to remain on the case. The court denied the request to withdraw. On February 9, 2016, Chavez filed a “motion ineffective assistance of appellate counsel,” claiming that both trial counsel and postconviction counsel were ineffective for not providing Chavez necessary information. In response, on February 16, 2016, postconviction counsel again sought to withdraw, noting that “Chavez has created, by his letter of 2/9/16, an unwaivable conflict for me and therefore I can no longer represent him in these cases.” Chavez again responded, explaining that he talked with counsel “at length,” that he “did not realize the effect of the Ineffective assistance Motion,” and that he wished for counsel to continue as his attorney. The circuit court granted counsel’s motion to withdraw on February 19, 2016. On February 29, 2016, Chavez moved to proceed pro se.

⁴ While the postconviction motions were pending, Chavez was facing probation revocation. The revocation hearing was held on March 21, 2016, and resulted in revocation in all four cases.

there a colloquy required between the court and the defendant before the transfer takes place, and (5) is a transfer in the public interest?⁵ We conclude that by consenting to the transfer of the cases to Branch I, Chavez waived his right to challenge the transfer on appeal.

SHEBOYGAN COUNTY CIRCUIT COURT RULE 704 (RULE 704) provides that “[w]henever it is brought to the attention of the clerk of court that a defendant has criminal cases pending in more than one court, and there has been an agreement reached as to the disposition of all cases, he or she shall transfer all cases, upon the approval of all judges involved, to the court assigned the lowest numbered case unless otherwise ordered.” At the hearing before Judge Stengel on June 10, 2013, the court asked whether “we have an agreement that all cases be assigned to this branch?” Trial counsel indicated that she would need to speak with Chavez, but Chavez responded, “I’m fine with that, your Honor.” The court was careful to indicate that it did not “want to push [Chavez] into making statements that ... [he has not] had a chance to discuss with [his] lawyer.” The court did note that 2013CF218 was the “old case”—meaning the “lowest numbered case”—and explained that “normally [assignment of all the cases to Branch I] is the way things would end up in a situation like this.” Later in the hearing, trial counsel confirmed that Chavez wanted the cases in Branch I, stating on the record that “Mr. Chavez has indicated, Judge, he wants all matters here.”

⁵ Our exhaustive, independent review of the record indicates that both postconviction counsel and Chavez filed several motions challenging whether Chavez’s plea was freely, voluntarily, and knowingly made due to defects in the plea colloquy. On appeal, Chavez does not address his argument that the plea colloquy was deficient. As that issue “has not been briefed or argued on appeal, ... we deem it abandoned.” *Reiman Assocs., Inc. v. R/A Advert., Inc.*, 102 Wis. 2d 305, 306 n.1, 306 N.W.2d 292 (Ct. App. 1981).

We conclude that Chavez waived any objection to the transfer of the cases to Branch I. The State argues that “by declaring his desire for a global resolution of the cases underlying this consolidated appeal, Chavez waived (or at least forfeited) appellate review of the transfer.” *See State v. Ndina*, 2009 WI 21, ¶29, 315 Wis. 2d 653, 761 N.W.2d 612. “Although cases sometimes use the words ‘forfeiture’ and ‘waiver’ interchangeably, the two words embody very different legal concepts. ‘Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the intentional relinquishment or abandonment of a known right.’” *Id.*, ¶29 (quoting *United States v. Olano*, 507 U.S. 725, 733 (1993) (quotation marks and citation omitted)). Chavez argues that “there is no express consent given by” him to the transfer and that consent must be “knowledgeably and voluntarily given.” We find that the record conclusively demonstrates that Chavez voluntarily consented to the transfer of all the cases to Branch I. Chavez first indicated that he was “fine” with transferring the cases, but the court cautioned him to discuss the issue with his counsel as the court did not want to “push” Chavez. After consulting with his attorney, Chavez again expressed his assent to the transfer.

The requirements of RULE 704 were followed as, by Chavez’s consent, “an agreement [was] reached as to the disposition of all cases,” and it is clear that “all judges” approved as Judge Bolgert did not lodge an objection to the transfer of the Branch V cases to Branch I. The cases also were all transferred to the court “assigned the lowest numbered case.” This is all RULE 704 requires. Chavez has not provided this court with any applicable case law challenging the transfer of cases between branches of the circuit court or the jurisdiction of the circuit court, nor has he shown any prejudice to his cause. The circuit court did not err in dismissing Chavez’s postconviction motions.

IT IS ORDERED that the judgments and the 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.

Diane M. Fremgen
Clerk of Court of Appeals