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

September 5, 2018

To:

Hon. Mark T. Slate
Circuit Court Judge
571 County Road A
Green Lake, WI 54941

Amy Thoma
Clerk of Circuit Court
Green Lake County Courthouse
571 County Road A
Green Lake, WI 54941

Andrew Joseph Christenson
District Attorney
571 County Road A
Green Lake, WI 54941

Anne Christenson Murphy
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Jeffrey S. Vujnovich, #63889
Jackson Corr. Inst.
P.O. Box 233
Black River Falls, WI 54615-0233

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

2017AP2138 State of Wisconsin v. Jeffrey S. Vujnovich (L.C. #2014CF55)

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

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).

Jeffrey Vujnovich appeals pro se the circuit court's denial of his motion to withdraw his plea to hit and run causing great bodily harm. 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.

According to the criminal complaint, Vujnovich was operating his vehicle while under the influence of alcohol (OWI) when he struck a bicyclist and departed the scene. After being transported to a hospital, the victim was in intensive care and "had a bruise on his brain, five broken ribs, a punctured lung, a fractured pelvis, and … his hip socket was completely shattered."

Vujnovich subsequently pled to eighth-offense OWI and hit and run causing great bodily harm, the latter in violation of WIS. STAT. §§ 346.67(1) and 346.74(5)(c). At the plea hearing, the court asked Vujnovich if it was correct that he would be pleading to Count 2, the OWI charge, and "Count 3, hit and run involving *great bodily harm*." Vujnovich responded: "Yes, Your Honor." A short time later, the following exchange took place between the court and Vujnovich in relation to the hit-and-run charge:

> THE COURT: With regards to hit and run, *great bodily injury*, the elements are that you drove or operated a motor vehicle involved in an accident on a highway and you knew that the vehicle … that you were driving was involved in an accident involving a person, the accident resulted in *an injury* to a person, you did not immediately stop your vehicle at the scene …. Do you understand those elements?
>
> [VUJNOVICH]: Yes, Your Honor.

After discussing penalites for the OWI charge, the court asked Vujnovich if he understood "with regard to Count 3, hit and run *great bodily harm*, the maximum penalty is a $50,000 fine, fifteen

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

years' imprisonment or both and a revocation of your operating privilege for two years," to which Vujnovich responded: "Yes, Your Honor." The court later asked Vujnovich's counsel if counsel went over the elements of the crime and the penalties with Vujnovich, to which counsel responded: "I did." Counsel also answered affirmatively when the court asked if counsel believed that Vujnovich "knows what he is doing" and "is making his pleas knowingly, freely, voluntarily, intelligently and understandingly." The court accepted Vujnovich's plea to both charges.

Following sentencing, Vujnovich moved pro se to withdraw his plea to the hit-and-run charge, asserting that his plea was "entered involuntarily because of the vague information and understanding of the elements of the charge. Felony Great Bodily Harm." The circuit court held a nonevidentiary hearing at which Vujnovich initially expressed that his complaint regarding the plea colloquy was that it was "vague" when the court had indicated that an element of the crime was that his actions had caused "injury" to the victim instead of the court saying "great bodily harm." When the court asked for clarification as to what Vujnovich felt was vague, Vujnovich said, "That at the time that happened, I wasn't aware it was a person that I hit." When the court followed up with, "So you're not arguing that it—great bodily harm or injury, you're arguing that you didn't believe you hit a person," Vujnovich responded, "Right." Trying to clear up its confusion, the court asked, "[T]he motion you filed was, you were arguing that you didn't know the State had the burden to prove the injury caused great bodily harm. Now you're saying that you shouldn't have even been charged." Vujnovich responded, "Yeah, see? The … Court never said … what permanent injuries that my victim sustained." The following exchange subsequently took place:

> THE COURT: …. So … [t]he issue is with regards to great bodily harm; is that correct?
>
> [VUJNOVICH]: Right.
>
> THE COURT: Okay. And it's your contention that you didn't understand the definition of great bodily harm, *or that it wasn't told to you*?
>
> [VUJNOVICH]: It wasn't *told* to me.
>
> THE COURT: Okay. Even though the charge states, "great bodily harm." Just to be clear here, sir. That's the issue that the Court needs to address; correct?
>
> [VUJNOVICH]: Right.

The court concluded that Vujnovich had not made a prima facie case that his plea should be withdrawn based upon a lack of understanding of the element of great bodily harm. We agree.

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 nature of the charge, in this case specifically the elements of the charge. *See* ***State v. Howell***, 2007 WI 75, ¶¶43, 51, 54, 301 Wis. 2d 350, 734 N.W.2d 48. If the defendant believes that the circuit court did not fulfill those duties, the defendant may seek plea withdrawal pursuant to ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986), based on the alleged deficiencies in the plea colloquy. *See* ***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. If the defendant's motion does satisfy these requirements, the burden then shifts to the State "to show by clear and convincing evidence that the defendant's plea was knowingly, voluntarily, and intelligently entered, despite the inadequacy of the record at the time of the plea's acceptance." ***Bangert***, 131 Wis. 2d at 274. Whether a party has met its burden of making a prima facie case is a question of law we review de novo. ***State v. Moederndorfer***, 141 Wis. 2d 823, 831, 416 N.W.2d 627 (Ct. App. 1987).

We agree with the circuit court that, as is required to switch the burden to the State under ***Bangert***, Vujnovich failed to sufficiently allege that he did not know or understand that an element of the hit-and-run charge of which he was convicted was that he caused great bodily harm to the victim. As the State points out in its response brief, "Vujnovich does not allege in his postconviction motion ... that he did not understand that [when the circuit court said 'injury' during the plea colloquy it] meant 'great bodily harm' to the victim."[2] Moreover, there is likely

[2] Vujnovich filed no reply brief to contest the State's response brief.

a reason why Vujnovich did not allege this: because in discussing the hit-and-run charge, the circuit court repeatedly indicated that the charge was for causing "great bodily harm"/"great bodily injury."

On appeal, Vujnovich complains that during the plea colloquy the circuit court did not tell him "that 'great bodily harm' means injury creates a substantial risk of death or which causes serious permanent disfigurement or which causes a permanent or protracted loss or impairment of the function of any bodily member or organ or other serious bodily injury. *See* Jury Instruction 2670." But, even when given the opportunity to clarify his confusing motion and clearly state at the postconviction hearing that his contention was that he did not understand the nature of the hit-and-run charge, he did not express a lack of knowledge or understanding, but simply stated that the court failed to explain the charge to him in the manner he deems was required:

> THE COURT: …. So … [t]he issue is with regards to great bodily harm; is that correct?
>
> [VUJNOVICH]: Right.
>
> THE COURT: Okay. And it's your contention that you didn't *understand* the definition of great bodily harm, *or that it wasn't told to you*?
>
> [VUJNOVICH]: It wasn't *told* to me.

Thus, Vujnovich has not satisfied the second requirement to demonstrate that a manifest injustice occurred justifying plea withdrawal, and we conclude the circuit court did not err in denying his motion.

For the foregoing reasons, we affirm.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals