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**DISTRICT II**

October 10, 2018

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

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2017AP1088-CR

State of Wisconsin v. Lardara J. Solomon (L.C. #2014CF290)

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).**

Lardara J. Solomon appeals from a judgment of conviction and an order denying his motion for postconviction relief. 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).<sup>1</sup> We affirm.

Solomon was charged with attempted first-degree intentional homicide and substantial battery for his attack on his girlfriend, W.G. According to the complaint, Solomon and W.G. got into an argument over his accusations of her cheating on him. Solomon became enraged and said, “I should fucking kill you bitch.” He then stabbed W.G. in the chest with a knife using an over the shoulder stabbing motion. W.G. had to be transported to the hospital for treatment, where the stab wound was closed with four stitches.

Pursuant to a plea agreement, Solomon pled no contest to a reduced charge of first-degree reckless injury. The circuit court sentenced him to ten years of initial confinement and four years of extended supervision. Solomon subsequently filed a motion for postconviction relief. In it, he sought to withdraw his plea, arguing that there was not a factual basis to support it. After a hearing on the matter, the circuit court denied Solomon’s motion. This appeal follows.

On appeal, Solomon renews his request for plea withdrawal due to an insufficient factual basis. Specifically, he contends that he did not cause W.D. great bodily harm, which is required for the offense of first-degree reckless injury. *See* WIS JI—CRIMINAL 1250; WIS. STAT. § 940.23(1)(a).

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.*

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2015-16 version.

*Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. One type of manifest injustice is the failure to establish a sufficient factual basis for a plea. *State v. Johnson*, 207 Wis. 2d 239, 244, 558 N.W.2d 375 (1997). Whether a factual basis exists from documents in the record is an issue that this court reviews independently. *See State v. Peralta*, 2011 WI App 81, ¶16, 334 Wis. 2d 159, 800 N.W.2d 512.

Where, as in the present case, a plea is entered pursuant to an agreement, the circuit court “need not go to the same length to determine whether the facts would sustain the charge as it would where there is no negotiated plea.” *Broadie v. State*, 68 Wis. 2d 420, 423, 228 N.W.2d 687 (1975). This rule “reflects the reality that often in the context of a plea bargain, a plea is offered to a crime that does not closely match the conduct that the factual basis establishes.” *State v. Harrell*, 182 Wis. 2d 408, 419, 513 N.W.2d 676 (Ct. App. 1994). Thus, a defendant is not permitted to withdraw a plea if a factual basis is shown for a more serious charge reasonably related to the offense to which the plea is offered. *See id.*

Here, we conclude that the original charge of attempted first-degree intentional homicide is reasonably related to the reduced charge of first-degree reckless injury because they arose out of the same course of conduct. We further conclude that the record provides a factual basis for the original charge. As noted in the complaint, Solomon said that he should kill W.G. right before stabbing her in the chest with a knife using an over the shoulder stabbing motion. The knife was described in the presentence report as a “big knife” like a butcher knife. The stab wound was one inch above W.G.’s breast, near her heart and main artery. W.G. saw blood “spurting” from the wound and applied pressure to it with her shirt. She later credited her certified nursing assistant training with saving her life, believing that she would have bled to death otherwise. These facts and inferences drawn from them satisfy the elements of attempted

first-degree intentional homicide.<sup>2</sup> Accordingly, pursuant to *Harrell*, Solomon is not permitted to withdraw his plea. *Id.*

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.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*

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<sup>2</sup> The crime of attempted first-degree intentional homicide consists of two elements: (1) the defendant intended to kill the victim; and (2) the defendant did acts toward the commission of the crime that demonstrate unequivocally, under all of the circumstances, that the defendant intended to kill and would have killed the victim except for the intervention of another person or some other extraneous factor. WIS JI—CRIMINAL 1070.