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February 19, 2019

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

2017AP2463 State of Wisconsin v. Shafia M. Jones (L.C. # 2015CF188)

Before Lundsten, P.J., Blanchard and Fitzpatrick, 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).

Shafia Jones, pro se, appeals the circuit court order that denied Jones's motion to vacate her judgment of conviction for robbery of a financial institution, party to the crime, on her reinstated ***Alford*** plea.[1] Based upon our review of the briefs and record, we conclude at

[1] ***North Carolina v. Alford***, 400 U.S. 25 (1970).

(continued)

conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[2] We summarily affirm.

In April 2015, the State charged Jones with one count of armed robbery and one count of robbery of a financial institution, both as a party to a crime, and two counts of misdemeanor bail jumping. The charges arose from the robbery of a Guaranty Bank in Fond du Lac. Pursuant to a plea agreement, Jones entered an ***Alford*** plea to robbery of a financial institution, as a party to the crime. Jones moved to withdraw her plea prior to sentencing. After a motion hearing, the court allowed Jones to withdraw her plea.

The State moved for reconsideration, arguing that Jones had not shown a fair and just reason to withdraw her plea. The circuit court granted the motion, reinstated Jones's plea, and sentenced Jones to four years of initial confinement and six years of extended supervision. Jones then moved to vacate her judgment of conviction, arguing that: (1) the circuit court lacked subject matter jurisdiction over the charged crime of robbery of a financial institution; (2) Jones had established a fair and just reason to withdraw her plea, and that the plea lacked a factual basis; (3) the circuit court acted contrary to WIS. STAT. §§ 971.08(3) and 904.10 and violated Jones's rights against double jeopardy by reinstating Jones's plea; and (4) Jones's speedy trial rights were violated. The circuit court denied the motion.

The Honorable Dale English accepted Jones's plea and granted Jones's motion to withdraw her plea. The Honorable Richard Nuss granted the State's motion to reinstate Jones's plea, sentenced Jones, and denied Jones's motion to void her judgment of conviction.

[2] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Jones argues, first, that the circuit court lacked subject matter jurisdiction over the charge of robbery of a financial institution under WIS. STAT. § 943.87. She asserts that Guaranty Bank is a federal savings bank, and contends that a federal savings bank is not a "financial institution" under the Wisconsin Statutes. Jones contends that, under the Supremacy Clause, only the federal government may prosecute a defendant for robbery of a federal savings bank under 18 U.S.C. § 2113 (federal bank robbery statute). We are not persuaded.

Wisconsin circuit courts have original subject matter jurisdiction over all criminal matters in this state. WIS. CONST. art. VII, § 8. Thus, the court had subject matter jurisdiction over the charge against Jones of robbery of a financial institution under WIS. STAT. § 943.87. Moreover, Jones's argument that robbery of a financial institutional under § 943.87 does not include robbery of a federal savings bank is meritless. *See* WIS. STAT. § 943.80(2) (providing that a "[f]inancial institution" includes "a savings bank … whether chartered under the laws of this state, another state or territory, or under the laws of the United States"). We also reject Jones's argument that the Supremacy Clause deprived the circuit court of jurisdiction. The fact that Jones could have been charged with a federal crime for the same act did not deprive the circuit court of subject matter jurisdiction over Jones's charge for violation of a state statute. *See* ***State v. Bruckner***, 151 Wis. 2d 833, 856, 447 N.W.2d 376 (Ct. App. 1989) ("If the same act violates both federal and state law, it may be punished by both sovereigns.").

Next, Jones contends that she provided a fair and just reason for withdrawing her plea and that the circuit court therefore erred by granting reconsideration and reinstating the withdrawn plea. Again, we are not persuaded.

We review a circuit court's decision on a motion for reconsideration for an erroneous exercise of discretion. ***Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.***, 2004 WI App 129, ¶6, 275 Wis. 2d 397, 685 N.W.2d 853. A circuit court may grant reconsideration if the moving party has established that a ruling was based on a manifest error of law or fact. ***Id.***, ¶44.

Here, the circuit court determined that the plea withdrawal had been granted based on the wrong legal standard. The court explained that, after its review of the plea withdrawal proceedings, it determined that Jones had not met her burden to show that plea withdrawal was warranted. We conclude that the circuit court properly exercised its discretion by reconsidering the granting of plea withdrawal.

A motion to withdraw a plea before sentencing must show a fair and just reason for withdrawing the plea. ***State v. Jenkins***, 2007 WI 96, ¶28, 303 Wis. 2d 157, 736 N.W.2d 24. The mere desire for a trial or misgivings about the plea do not constitute a fair and just reason. ***Id.***, ¶32. "The defendant has the burden to prove by a preponderance of the evidence that [she] has a fair and just reason" to withdraw her plea. ***Id.*** Moreover, a defendant's proffered "fair and just reason" must be "plausible," that is, "supported by the evidence of record." ***State v. Shanks***, 152 Wis. 2d 284, 290, 448 N.W.2d 264 (Ct. App. 1989). Thus, a defendant must show that her reason for plea withdrawal actually exists. ***State v. Kivioja***, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999).

The circuit court allowed Jones to withdraw her plea based on Jones's assertion that, after she entered her plea, she read a letter from her attorney to the prosecutor that was dated two days prior to the plea hearing. In the letter, defense counsel stated that a witness had indicated that the

witness had a conversation with Jones's codefendant, during which the codefendant stated that Jones was not involved in the robbery. Counsel stated in the letter that, if the conversation had taken place, it would be recorded because the codefendant placed the call from jail. Defense counsel stated that he had gone over the contents of the letter with Jones prior to the plea hearing, although Jones would not have received her copy of the letter until after the hearing. Defense counsel also informed the court that the information in the letter had been given to counsel by Jones.

Thus, Jones provided only her own claim of a recorded conversation between a witness and Jones's codefendant as a basis for plea withdrawal. Jones provided no evidence to support her assertion that the conversation had taken place, and thus did not meet her burden of setting forth a fair and just reason by a preponderance of the evidence. Additionally, because Jones was the source of the information in defense counsel's letter, Jones already knew those facts prior to the plea hearing. On that basis, as well, the letter did not establish a fair and just reason for plea withdrawal. Because Jones did not establish a fair and just reason for plea withdrawal, the circuit court properly reconsidered the granting of plea withdrawal and reinstated Jones's plea.

Jones also contends that the court erred by reinstating her plea because, Jones asserts, reinstating the withdrawn plea violated WIS. STAT. §§ 904.10 and 971.08(3). We disagree.

WISCONSIN STAT. § 904.10 provides that a withdrawn guilty plea is not admissible as evidence against a person at a subsequent proceeding. Here, however, the court reconsidered the grant of plea withdrawal and reinstated the plea. A withdrawn plea was not admitted as evidence against Jones.

WISCONSIN STAT. § 971.08(3) similarly provides that a withdrawn guilty plea may not be used against a defendant in a subsequent action. Again, here, the plea was reinstated. It was not withdrawn and then used against Jones in a subsequent action.

Jones also asserts that the circuit court lacked any authority to reinstate the plea. However, circuit courts have authority to reconsider non-final orders. ***State v. Williams***, 2005 WI App 221, ¶17, 287 Wis. 2d 748, 706 N.W.2d 355 (a circuit court has inherent authority to reconsider a non-final ruling prior to entry of the final order or judgment in the case).

Jones asserts that her plea lacked a factual basis. However, the criminal complaint alleged the following. Police were called to the Guaranty Bank in Fond du Lac on a report of a robbery. Police interviewed a bank employee, who reported that a man approached the bank counter, put down a piece of paper, and said: "This is a robbery, bitch, give me the money, I have a gun and don't set off any alarms." The bank employee gave the man money and he left. The paper left on the counter was a handwritten note stating generally what the man had said to the bank employee.

Police identified Maranatha Henderson as the man who entered the bank. Henderson admitted his involvement in the robbery to police, and also stated that Jones was involved in the planning of the robbery, wrote the handwritten note, drove in a car with Henderson to the bank, and waited in the car during the robbery. Jones admitted to police that she wrote the note and waited in the car during the robbery. Those facts established a strong proof of guilt sufficient to support Jones's ***Alford*** plea to robbery of a financial institution as a party to a crime. *See* ***State v. Smith***, 202 Wis. 2d 21, 25, 549 N.W.2d 232 (1996) ("When the plea entered is an ***Alford*** plea, the factual basis is deemed sufficient only if there is strong proof of guilt that the defendant

committed the crime to which the defendant pleads."); WIS. STAT. §§ 943.87 (crime of robbery of a financial institution is committed by one who, by use or threat of imminent force takes from an individual money that is under the custody or control of a financial institution); 939.05 (person may be charged and convicted of a crime if the person is concerned in the commission of the crime).

Jones also asserts that reinstating the plea violated her rights against double jeopardy. She asserts that she was convicted twice, once when she entered the ***Alford*** plea and once when that plea was reinstated. However, the Double Jeopardy Clause prohibits multiple prosecutions or multiple punishments for the same offense. ***State v. Berry***, 2016 WI App 40, ¶8, 369 Wis. 2d 211, 879 N.W.2d 802. Here, Jones was not prosecuted or punished twice for the offense of robbery of a financial institution. Rather, she was convicted once, on her reinstated plea, and received one sentence. We reject Jones's claim of a double jeopardy violation.

Finally, Jones contends that her constitutional and statutory speedy trial rights were violated. She asserts that, after the circuit court allowed her to withdraw her plea, she demanded a speedy trial on October 2, 2015. Jones contends that she had a statutory right to trial within 90 days of October 2, 2015, which was December 31, 2015. *See* WIS. STAT. § 971.10(2)(a). She argues that her constitutional and statutory speedy trial rights were violated because the circuit court failed to schedule her trial following withdrawal of her plea, but rather reinstated her plea on January 22, 2016, more than 90 days after her speedy trial demand. Jones contends that her conviction must be vacated based on the violation of her speedy trial rights.

As to Jones's constitutional speedy trial claim, we conclude that Jones has failed to develop this argument sufficiently for this court to address it. "When a defendant asserts a

violation of [her] constitutional right to a speedy trial, the court employs a four-part balancing test considering: (1) the length of delay; (2) the reason for the delay; (3) the defendant's assertion of [her] right; and (4) prejudice to the defendant." ***State v. Borhegyi***, 222 Wis. 2d 506, 509, 588 N.W.2d 89 (Ct. App. 1998). This requires a review of each factor based on the facts of a particular case and a weighing of the totality of the circumstances. *See* ***id.*** Here, Jones has not developed an argument applying those factors and weighing the totality of the circumstances. Because Jones has failed to sufficiently develop a constitutional argument, we will not address it. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

As to Jones's statutory speedy trial claim, we reject Jones's claim that she is entitled to an order vacating her conviction based on the court's failure to hold a trial within 90 days of her speedy trial demand. The remedy for a violation of the statutory right to a speedy trial "is simply release from custody or from the obligations of bond pending trial," not dismissal of the charges. ***State ex rel. Rabe v. Ferris***, 97 Wis. 2d 63, 67-68, 293 N.W.2d 151 (1980).

Therefore,

IT IS ORDERED that the order 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