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DISTRICT I

August 21, 2019

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

2018AP1256-CR State of Wisconsin v. Terrance Maurice Hutchinson
(L.C. # 2016CF1814)

Before Brash, P.J., Brennan and Dugan, 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).

Terrance Maurice Hutchinson appeals from a judgment, entered on his guilty plea, convicting him on one count of first-degree intentional homicide with a dangerous weapon as a

party to a crime. Hutchinson also appeals from an order denying his postconviction motion.[1] 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 (2017-18).[2] The judgment and order are summarily affirmed.

Hutchinson was charged with one count of first-degree intentional homicide with a dangerous weapon as a party to a crime after he and his girlfriend, Shannon Carson-Quinn, killed the remaining employee of a grocery store from which they had recently been fired. Hutchinson agreed to plead guilty to the charged offense in exchange for which the State "would leave to the sound discretion of [the trial court] as to when or whether the defendant would be eligible to petition for parole" and seek restitution. After engaging Hutchinson in a plea colloquy, the trial court accepted Hutchinson's guilty plea. The trial court later sentenced Hutchinson to life imprisonment without eligibility for release, plus an additional five years' imprisonment for the dangerous weapon enhancer.

Hutchinson brought a postconviction motion for plea withdrawal in which he alleged that the trial court's "plea colloquy did not inform [him] that he could be sentenced to life imprisonment without the possibility of release to extended supervision, and it did not inform [him] of the 20-year mandatory minimum." Hutchinson also alleged that "he was unaware" of

[1] The Honorable M. Joseph Donald accepted Hutchinson's guilty plea and imposed sentence; we refer to him as the trial court. The Honorable Carolina Stark conducted postconviction proceedings and denied the postconviction motion; we refer to her as the circuit court.

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

these sentencing possibilities at the time he entered his plea.[3] In his brief in support of his postconviction motion, though not in the motion itself, Hutchinson further alleged that he was entitled to plea withdrawal because "the plea agreement, under which the State agreed to leave parole eligibility to the Court's discretion, was based on a legal impossibility because the Court had no authority to make the defendant eligible for parole."[4]

The circuit court ordered briefing on the plea colloquy issue. In that order, the circuit court stated in a footnote that it was rejecting Hutchinson's "legal impossibility" claim as a basis for plea withdrawal because the circuit court was "satisfied that the prosecutor misspoke at the plea hearing when he referred to *parole* eligibility instead of extended supervision."

[3] In pertinent part, under WIS. STAT. § 973.014(1g)(a):

> when a court sentences a person to life imprisonment for a crime committed on or after December 31, 1999, the court shall make an extended supervision eligibility date determination regarding the person and choose one of the following options:
>
> 1. The person is eligible for release to extended supervision after serving 20 years.
>
> 2. The person is eligible for release to extended supervision on a date set by the court. Under this subdivision, the court may set any later date than that provided in subd. 1., but may not set a date that occurs before the earliest possible date under subd. 1.
>
> 3. The person is not eligible for release to extended supervision.

[4] On appeal, the State asserts that this argument was waived because it was not raised in the postconviction motion. Hutchinson counters that the issue was raised in the brief supporting the motion. We will address the issue on appeal because the circuit court ruled on it. We note, however, that appellate review of a postconviction motion is typically limited to "the four corners of the document itself," not the brief. *See* ***State v. Love***, 2005 WI 116, ¶27, 284 Wis. 2d 111, 700 N.W.2d 62; ***State v. Allen***, 2004 WI 106, ¶¶23, 27, 274 Wis. 2d 568, 682 N.W.2d 433.

After briefing, the circuit court ordered a hearing. Hutchinson and his trial attorney both testified. The circuit court made a series of factual findings, including express findings regarding Hutchinson's credibility, before ultimately concluding that Hutchinson "did understand the possible penalties, the options that the sentencing judge would have for a [first-]degree intentional homicide. Because I find that he knew and he understood that, I find that his plea was knowingly and intelligently made[.]" Thus, the circuit court denied the motion to withdraw the guilty plea. Hutchinson appeals.

A defendant is entitled to an evidentiary hearing on a plea withdrawal motion if the defendant makes a prima facie showing that the trial court's plea colloquy failed to conform to WIS. STAT. § 971.08 or other mandated plea procedures and if "the defendant alleges he did not know or understand the information that should have been provided at the plea hearing." ***State v. Brown***, 2006 WI 100, ¶2, 293 Wis. 2d 594, 716 N.W.2d 906; *see also* ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). If the motion is sufficiently pled, the burden shifts to the State "to prove by clear and convincing evidence that the defendant's plea, despite the inadequacy of the plea colloquy, was knowing, intelligent, and voluntary." ***State v. Taylor***, 2013 WI 34, ¶32, 347 Wis. 2d 30, 829 N.W.2d 482. The State may use any evidence, including testimony from the defendant and defense counsel, to meet its burden. *See* ***id.***

The State does not appear to contest that Hutchinson's plea withdrawal motion was sufficiently pled to garner an evidentiary hearing; it is undisputed that the trial court did not expressly review the three options for extended supervision on a life sentence during the colloquy or that it should have done so. Rather, the dispute on appeal is whether the State met its burden to show that Hutchinson's plea was nevertheless knowing, intelligent, and voluntary.

At the postconviction hearing, Hutchinson's trial attorney testified that he had multiple conversations with Hutchinson about the sentencing options because Hutchinson was specifically concerned about what the trial court could do at sentencing. Trial counsel prepared an attachment to the guilty plea questionnaire; the attachment included the language of WIS. STAT. § 973.014(1g)(a) that details the trial court's three options for extended supervision and was introduced at the hearing as Exhibit 1.[5] Also introduced as an exhibit was a letter, which the defense stipulated had been written by Hutchinson despite his inability to recall writing it, sent to Carson-Quinn, in which he instructed her to "[l]ook in law book number six"[6] to see "the layout first degree, life max"; parts of § 973.014(1g)(a) had also been hand-copied in the letter.

The circuit court ultimately concluded that "the evidence shows clearly and convincingly that the defendant knew, that the defendant understood the three options that the sentencing court would have for a [first-]degree intentional homicide." It made this conclusion based on its findings, including but not limited to determinations that: (1) the plea colloquy informed Hutchinson that the maximum period of imprisonment was life, even if it did not review the extended supervision options; (2) trial counsel's plea attachment clearly delineated the trial court's sentencing options; (3) Hutchinson told the trial court during the plea colloquy that he had reviewed and understood the plea forms; and (4) Hutchison's testimony at the motion hearing was not credible.

[5] In his appellant's brief, Hutchinson argues that "[t]here was no attachment filed with the court." The attachment prepared by trial counsel is in the appellate record as item 19, following the standard plea questionnaire and addendum as record item 18. Despite item 19's description on the record index as simply "Jury Instructions," the first page of this record item is titled "Guilty Plea Attachment."

[6] Volume 6 of the published Wisconsin Statutes includes Chapters 805 to 995.

Fact-finding and credibility determinations are matters left generally to the circuit court's discretion, and we do not disturb those conclusions unless clearly erroneous. *See* ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643-44, 340 N.W.2d 575 (Ct. App. 1983). Hutchinson makes no showing that the circuit court's factual findings and credibility determinations in this case were clearly erroneous. Based on those findings, we agree with the circuit court's conclusion that Hutchinson's guilty plea was knowing, intelligent, and voluntary despite the defect in the plea colloquy from the trial court's failure to review the three available extended supervision options under WIS. STAT. § 973.014(1g)(a).

Hutchinson also complains that his plea should be withdrawn because the plea agreement as recited by the State at the start of the plea hearing, that it would stand silent on his *parole* eligibility, was a legal impossibility. *See* ***State v. Woods***, 173 Wis. 2d 129, 140, 496 N.W.2d 144 (Ct. App. 1992) (plea agreement to legal impossibility renders plea uninformed and can compromise voluntariness of plea). However, the circuit court concluded, and we agree, that the State simply misspoke at the plea hearing when it referred to parole instead of extended supervision. Indeed, the plea questionnaire referred to "supervised release" and the attachment prepared by trial counsel, which included language from WIS. STAT. § 973.014, referenced extended supervision.

Further, plea withdrawal is not warranted for inconsequential defects in the plea process. *See* ***State v. Johnson***, 2012 WI App 21, ¶12, 339 Wis. 2d 421, 811 N.W.2d 441. The trial court has essentially the same three options for determining a defendant's eligibility for supervised release on a life sentence, whether that release is to parole or to extended supervision: eligibility in twenty years, eligibility after twenty years, or no eligibility. *See* ***State v. Barbeau***, 2016 WI App 51, ¶¶16-17, 370 Wis. 2d 736, 883 N.W.2d 520. Hutchinson does not contend that he

understood there to be any significant difference between parole and extended supervision such that he would have rejected the plea if only he had known the correct possible release program was extended supervision, not parole. Accordingly, we discern no reviewable error.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed. *See* 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