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DISTRICT II

September 11, 2019

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

2017AP2490-CR State of Wisconsin v. Gustavo Valdez (L.C. #2014CF1268)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, 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).

Gustavo Valdez appeals pro se from a judgment of conviction and an order denying his postconviction motion. He seeks to withdraw his guilty pleas. 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).¹ We affirm.

Valdez was convicted following guilty pleas to theft from a person and felony bail jumping. The circuit court imposed the maximum sentences available, totaling eight years of initial confinement and eight years of extended supervision.

After sentencing, Valdez moved to withdraw his guilty pleas, claiming that his trial counsel was ineffective. The circuit court denied Valdez's postconviction motion without an evidentiary hearing. This appeal follows.

On appeal, Valdez contends that the circuit court erred in denying his postconviction motion without an evidentiary hearing. He renews the claim made in the motion and asks that he be allowed to withdraw his pleas.

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. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. One way to establish a manifest injustice is to demonstrate that the defendant received ineffective assistance of counsel. *State v. Dillard*, 2014 WI 123, ¶84, 358 Wis. 2d 543, 859 N.W.2d 44.

When a defendant pursues postconviction relief based on ineffective assistance of counsel, the defendant must preserve counsel's testimony in a postconviction hearing. *State v. Curtis*, 218 Wis. 2d 550, 554-55, 582 N.W.2d 409 (Ct. App. 1998). However, a defendant is not

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

automatically entitled to a hearing upon filing a postconviction motion that alleges ineffective assistance of counsel.

To earn an evidentiary hearing on a postconviction motion, the defendant must allege “sufficient material facts that, if true, would entitle the defendant to relief.” *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. If the motion alleges sufficient facts, a hearing is required. *Id.* If the motion is insufficient, if it presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may exercise its discretion in deciding whether to grant a hearing. *Id.* We review the court’s discretionary decision under the deferential erroneous exercise of discretion standard. *Id.*

Here, we are not persuaded that Valdez was entitled to an evidentiary hearing on his postconviction motion. As noted by the State, Valdez’s motion consists primarily of conclusory allegations, undeveloped legal argument, and subjective opinions regarding the prosecution of his case. It fails to allege sufficient material facts to show how his trial counsel was ineffective. Likewise, it fails to allege sufficient material facts to show why, but for counsel’s alleged ineffectiveness, Valdez would have refused to plead guilty and would have insisted on going to trial. It also fails to explain Valdez’s own statement at the plea hearing in which he assured the circuit court that he was satisfied with counsel’s representation.

In the end, it appears that, having received the maximum sentences available, Valdez regretted his decision to enter his pleas. But that regret does not call into question trial counsel’s

performance or the integrity of the pleas. On this record, we conclude that the circuit court properly denied Valdez's postconviction motion without an evidentiary hearing.²

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.

Sheila T. Reiff
Clerk of Court of Appeals

² To the extent we have not addressed any other argument raised by Valdez on appeal, the argument is deemed rejected. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).