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DISTRICT I

October 7, 2019

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

2018AP1424-CR State of Wisconsin v. Demon K. Franklin (L.C. # 2016CF4442)
2018AP1425-CR State of Wisconsin v. Demon K. Franklin (L.C. # 2016CF2543)

Before Kessler, Kloppenburg 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).

Demon K. Franklin appeals judgments convicting him of two counts of attempted robbery with threat of force and one count of armed robbery, all as a party to a crime. He also appeals an order denying his postconviction motion to withdraw his guilty pleas. Franklin argues that he should be allowed to withdraw his pleas because: (1) the circuit court should have asked him if he needed a sign language interpreter present during the plea hearing; (2) he did not

understand his discussions with his trial counsel prior to entering his pleas; and (3) the plea questionnaire and waiver of rights form for one of his two cases was not fully completed. After review of the briefs and record, we conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).[1] We affirm.

A defendant seeking to withdraw a guilty plea after sentencing must show that relief is necessary to correct a manifest injustice. ***State v. Washington***, 176 Wis. 2d 205, 213, 500 N.W.2d 331 (Ct. App. 1993). A plea is manifestly unjust if it is not entered knowingly or voluntarily. ***State v. Giebel***, 198 Wis. 2d 207, 212, 541 N.W.2d 815 (Ct. App. 1995).

Franklin first contends that he should be allowed to withdraw his guilty pleas because the circuit court should have asked him whether he wanted to have a sign language interpreter present at the plea hearing. Franklin submits an affidavit stating that he had difficulty hearing the circuit court during the plea hearing and did not fully understand everything the circuit court said. We reject this argument.

The circuit court was aware of Franklin's hearing loss before the plea hearing. The first question that the circuit court asked Franklin during the plea hearing was, "Mr. Franklin, can you hear me?" Franklin replied, "Yes." Several minutes later, the circuit court asked Franklin's counsel about Franklin's hearing, stating, "I realize Mr. Franklin has some problems hearing. Were you able to find some accommodation so Mr. Franklin could hear you fine?" Franklin's counsel responded, "He now has his hearing aids, they are properly amped up, we have no trouble at all, none whatsoever." The circuit court then asked, "For any other type of reason, do

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

you believe Mr. Franklin wasn't able to meaningfully participate in these discussions?" Trial counsel responded that Franklin "was completely understanding and knowledgeable about what we're talking about."

In addition to the circuit court's explicit questions about Franklin's hearing and understanding, the record establishes that Franklin answered the circuit court's questions appropriately and gave no indication of any hearing difficulties. Throughout the entire plea colloquy, there was not a single occasion when Franklin told the court he could not hear, asked the court to repeat what it had said, or showed any sign of not hearing or understanding the court's questions. Because Franklin and his trial counsel informed the circuit court that Franklin was able to hear the proceedings after the circuit court questioned them on the matter, and because there was no indication that Franklin was having difficulty hearing, we reject Franklin's argument that he should be allowed to withdraw his guilty pleas because the circuit court did not ask him if he needed a sign language interpreter to assist him during the plea hearing.

Franklin next argues that he should be allowed to withdraw his guilty pleas because he did not understand the discussions he had with his trial counsel prior to entering his guilty pleas. He contends that he had only one working hearing aid when he met with counsel, which prevented him from understanding fully what was occurring. The flaw in Franklin's argument is that a plea may not be withdrawn because a defendant does not understand an aspect of the plea *prior to the plea hearing.* The crucial point is whether the defendant knows and understands what he or she is doing *when the plea is entered.* We reject Franklin's claim that he should be allowed to withdraw his plea due to his alleged problems hearing trial counsel in discussions that occurred before the plea hearing.

To the extent that Franklin's postconviction motion and accompanying affidavit could be read to raise a claim that his plea was not knowingly, intelligently, and voluntarily entered because he did not fully understand what the circuit court said during the plea hearing due to his impaired hearing—a legal argument Franklin does not explicitly raise—this claim, too, would be unavailing. Franklin concedes that the circuit court's colloquy fully complied with WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). Nevertheless, he broadly asserts that he was unaware of the charges that he was pleading to, he did not understand the constitutional rights he was waiving, he did not know what each of the elements of the crimes meant, and he believed that one of the armed robbery charges was being amended to operating a motor vehicle without the owner's consent. By making these assertions, Franklin is essentially arguing that a factor extrinsic to the plea colloquy—his impaired hearing—rendered his pleas to be unknowingly, unintelligently, and involuntarily entered. *See* ***State v. Howell***, 2007 WI 75, ¶74, 301 Wis. 3d 350, 734 N.W.2d 48.

Despite Franklin's broad claim that he did not understand certain aspects of his plea, Franklin has not explained how and why his purported inability to adequately hear during the plea hearing caused him to enter guilty pleas that he otherwise would not have entered. Stated differently, he has not explained the reasons why he would not have entered his guilty pleas if he had better heard the circuit court's colloquy. He has, therefore, not alleged facts that, if true, would entitle him to relief. *See* ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W. 2d 50 (1996). "A conclusory allegation of 'manifest injustice,' unsupported by any factual assertions, is legally insufficient." *See* ***Washington***, 176 Wis. 2d at 214. Franklin is not entitled to relief on the grounds that his impaired hearing rendered his pleas unknowing or involuntary.

Finally, Franklin argues that the plea questionnaire and waiver of rights form in one of the two underlying cases was not fully completed. The form failed to indicate that Franklin's trial counsel reviewed his constitutional rights with him, did not indicate whether Franklin would be pleading guilty or no contest, and did not list the terms of the plea agreement. Be that as it may, the circuit court thoroughly reviewed these matters with Franklin during the plea colloquy. Therefore, the omissions on the form are of no consequence. Franklin is not entitled to withdraw his guilty plea because the plea questionnaire and waiver of rights form was not completely filled out.

IT IS ORDERED that the judgments and order of the circuit court 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