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DISTRICT II

January 29, 2020

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

2018AP1560-CR State of Wisconsin v. Travis C. Kind (L.C. #2017CF111)

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).

Travis C. Kind appeals from a judgment of conviction and an order denying his postconviction motion. He seeks to withdraw his guilty 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 (2017-18).¹ We affirm.

Kind was convicted following a guilty plea to conspiracy to commit the manufacture or delivery of more than fifty grams of heroin. The charge stemmed from his participation with others in a criminal enterprise to sell heroin.

The circuit court sentenced Kind to eight years of initial confinement and twelve years of extended supervision. Afterwards, he moved to withdraw his plea on the ground that he did not understand the conspiracy element of the offense.

The circuit court held a hearing on the motion at which both trial counsel and Kind testified. The court found counsel credible in her opinion that Kind “understood what he was pleading to” based upon their interactions. By contrast, it found Kind not credible. Accordingly, the court denied the motion. This appeal follows.

A defendant who seeks to withdraw a plea after sentencing must establish that withdrawal is necessary to avoid a manifest injustice. *State v. Taylor*, 2013 WI 34, ¶24, 347 Wis. 2d 30, 829 N.W.2d 482. One way to show a manifest injustice is to demonstrate that a plea was not knowing, voluntary, and intelligent. *Id.*

When reviewing a decision on a motion to withdraw a plea, this court accepts the circuit court’s findings of evidentiary or historical fact unless they are clearly erroneous. *State v. Brown*, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906. However, whether a plea was

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

knowing, voluntary, and intelligent is a question of constitutional fact that this court reviews independently. *Id.*

On appeal, Kind contends that the circuit court erred in denying his motion to withdraw his plea. He renews his argument that he did not understand the conspiracy element of the offense.

The conspiracy element of Kind's offense is described in WIS. STAT. § 939.31. A defendant commits conspiracy when the defendant, "with intent that a crime be committed, agrees or combines with another for the purpose of committing that crime" and "one or more of the parties to the conspiracy does an act to effect its object." WIS. STAT. § 939.31.

We are satisfied that Kind understood this element when entering his plea. To begin, at the plea hearing, the circuit court informed Kind that the charge required that he "conspire[d] with others to deliver a controlled substance, and heroin is a controlled substance," and Kind unequivocally stated that he understood. Moreover, at the motion hearing, trial counsel confirmed meeting with Kind and discussing with him "the other people that were involved and [Kind's] interrelationship and involvement in the overall ... conspiracy" and how the State would be able to prove its case. Also at the motion hearing, Kind admitted to having read the criminal complaint, which laid out his involvement in the conspiracy, including his agreements to purchase heroin from an individual, his repeated purchases of heroin from that individual, and his resale of that heroin to others.

In the end, it appears that Kind’s motion for plea withdrawal was based not upon his lack of understanding of an element of the offense, but rather on his dissatisfaction with the sentence he received, which exceeded his counsel’s recommendation.² Indeed, when asked by the circuit court why he wished to withdraw his plea, Kind replied that he thought he would receive “a different amount of time” for his sentence. Kind’s dissatisfaction with the sentence he received does not call into question the integrity of his plea. In any event, on this record, we conclude that the court properly denied his motion.

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 At sentencing, Kind’s counsel recommended four years of initial confinement and four years of extended supervision.