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DISTRICT I

January 12, 2021

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

2018AP2157-CR State of Wisconsin v. Dewhite Dante Johnson
(L.C. # 2014CF004176)

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

Dewhite Dante Johnson, *pro se*, appeals the judgment of conviction, following a guilty plea, of second-degree sexual assault of a child under the age of sixteen. He also appeals from the order denying his postconviction motion for plea withdrawal. Based upon our review of the briefs

and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1) (2017-18).[1] We summarily affirm the judgment and order.

On September 21, 2014, Johnson was charged with two counts of first-degree sexual assault of a child—sexual contact with a child under the age of thirteen. Pursuant to a plea agreement, Johnson pled guilty to a reduced charge of one count of second-degree sexual assault of a child under the age of sixteen. In exchange, the State agreed to dismiss the remaining charge and ask that it be read-in at sentencing. The State also agreed not to make a sentencing recommendation.

At the plea hearing, the circuit court determined that trial counsel reviewed the wrong jury instruction with Johnson. The State explained that the proper jury instruction would require it to prove "intentional touching for the purpose of sexual gratification." Johnson told the circuit court that he understood the State's explanation of the proper jury instruction. The circuit court then conducted a plea colloquy with Johnson in which the circuit court ascertained that Johnson understood that the offense required proof "[t]hat [Johnson] had sexual contact with the victim of the offense who was under the age of [sixteen] at the time of the sexual contact," and "[t]hat sexual contact was for sexual gratification and arousal." The circuit court also asked Johnson whether he was receiving treatment for a mental illness. Johnson told the circuit court that he took medication for schizophrenia, but stated that the medication did not affect his ability to understand the proceedings. The circuit court also explained the maximum possible sentence and told Johnson that he would have to register as a sex offender. Johnson stated that he understood. The circuit court also advised Johnson that his guilty plea could possibly subject him to a sexually violent

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

person commitment under WIS. STAT. ch. 980. Johnson stated that he was unfamiliar with ch. 980; however, after some discussion, Johnson ultimately stated that he understood the possibility that he could be committed under ch. 980. The circuit court accepted Johnson's plea, finding him guilty of the reduced charge based on the allegations in the criminal complaint.

Prior to the sentencing hearing, Johnson wrote a letter to the circuit court asking that the court allow him to withdraw his plea. The letter stated that Johnson had not taken his medication on the day of the plea hearing and he felt pressured by trial counsel to enter a guilty plea. At a subsequent proceeding, the circuit court allowed Johnson's trial counsel to withdraw and appointed new counsel.

Johnson, by new counsel, then filed a motion to withdraw his guilty plea on the grounds that he was "over medicated" and did not understand the proceedings. At a hearing on the motion, Johnson testified that he suffers from schizophrenia, bipolar disorder, and attention deficit/hyperactivity disorder. Johnson testified that just before the start of trial, trial counsel approached him with the plea offer and advised him to take the offer because the victims would testify at a trial and he would face less jail time if he pled guilty. Johnson stated that he took the plea deal because he wanted a lower potential sentence so that he could be with his son. He testified that he did not understand counsel's insistence on taking the deal, but that he was not forced to take the deal, he understood the plea questionnaire that counsel reviewed with him, and that he "was thinking about [his] son." Johnson also testified that he was not sure which medication he was taking at the time and whether he was even taking it when he pled guilty.

Johnson's trial counsel testified that he told Johnson his "chances of prevailing [at trial] didn't look good." Counsel testified that the child victims were prepared to testify and that the

defense had no theory to counter the allegations. Counsel also testified that he advised Johnson about the possibility of being committed under WIS. STAT. ch. 980. Counsel also stated that based on his interactions with Johnson, he did not have any concerns as to Johnson's cognition or ability to understand the proceedings and that Johnson wanted to accept the plea offer.

The circuit court denied Johnson's presentencing motion to withdraw his guilty plea, stating that Johnson failed to show that he had a "fair and just reason" to withdraw his plea. The circuit court found that Johnson took his medications, understood the proceedings, made a conscious decision to accept the plea, and had enough familiarity with the criminal justice system based on previous convictions that he would not have been confused by the process.

Johnson was ultimately sentenced to ten years' initial confinement followed by eight years' extended supervision. Johnson, *pro se*, then filed a postconviction motion to withdraw his guilty plea. Johnson alleged multiple instances of ineffective assistance of counsel; specifically, that counsel coerced him into accepting the plea; counsel reviewed the wrong jury instruction at the plea hearing; counsel failed to review the plea questionnaire; counsel failed to properly explain WIS. STAT. ch. 980 commitment; and counsel failed to assess his mental health issues. Johnson also argued that he received a constitutionally deficient plea colloquy. The postconviction court denied the motion without a hearing. This appeal follows.

On appeal, however, Johnson, does not raise the issues raised in his postconviction motion. Those claims are therefore deemed abandoned. *See* ***A.O. Smith Corp. v. Allstate Ins. Cos.***, 222 Wis. 2d 475, 491, 588 N.W.2d 285 (Ct. App. 1998) (An issue raised in the circuit court, but not raised on appeal, is deemed abandoned.). Rather, for the first time on appeal, Johnson contends that the State withheld exculpatory evidence. Specifically, he argues that the State suppressed

evidence suggesting that the victims were assaulted by "an unknown relative." Johnson argues that he did not have the "benefit of the withheld evidence" when he pled guilty, resulting in the State's violation of due process under ***Brady v. Maryland***, 373 U.S. 83 (1963), and a violation of its statutory duties under WIS. STAT. § 971.23. He contends that the State's alleged violations caused him to enter a plea that was not knowing, intelligent, and voluntary.

Johnson did not raise this ground to withdraw his plea either before or during sentencing, nor did he raise this issue in his postconviction motion. Johnson has therefore forfeited this alleged ground on appeal. *See* ***State v. Huebner***, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues that are not preserved at the circuit court generally will not be considered on appeal). Accordingly, this court will not address an issue raised for the first time on appeal. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997).

Johnson's brief to this court also appears to raise additional issues. He contends that: (1) the evidence was insufficient to support his conviction; (2) after his arrest, he was not brought before a judge within a reasonable period of time for his initial appearance; and (3) his right to a speedy trial was violated. We reject all of Johnson's additional claims because they are all raised for the first time on appeal. *See* ***id.*** Moreover, we note that a valid guilty plea waives all non-jurisdictional arguments and defenses, including constitutional claims. *See* ***State v. Asmus***, 2010 WI App 48, ¶3, 324 Wis. 2d 427, 782 N.W.2d 435. Therefore, we do not address these issues further.

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