OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

October 26, 2021

To:

Hon. Jeffrey A. Wagner
Circuit Court Judge
Electronic Notice

John Barrett
Clerk of Circuit Court
Milwaukee County
Electronic Notice

Philip J. Brehm
Electronic Notice

John D. Flynn
Electronic Notice

Lisa E.F. Kumfer
Electronic Notice

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

2020AP1823-CR	State of Wisconsin v. Jermarro Shandere Dantzler (L.C. # 2015CF4454)
2020AP1824-CR	State of Wisconsin v. Jermarro Shandere Dantzler (L.C. # 2016CF2154)

Before Brash, C.J., Donald, P.J., and White, 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).

Jermarro Shandere Dantzler appeals judgments of conviction, following no-contest pleas, to one count of second-degree sexual assault of a child and bail jumping. He also appeals from the postconviction orders denying his motions to withdraw his no-contest pleas and for reconsideration. Upon our review of the briefs and record, we conclude at conference that this

matter is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] We summarily affirm.

In Milwaukee County Circuit Court case No. 2015CF4454, the State charged Dantzler with one count of first-degree sexual assault. According to the criminal complaint, Dantzler anally raped a fifteen-year-old victim, causing the victim to sustain an anal tear. Dantzler's DNA was found on multiple swabs taken from the victim.

In Milwaukee County Circuit Court case No. 2016CF2154, the State charged Dantzler with conspiracy to commit perjury and bail jumping. The charges stemmed from allegations that Dantzler enlisted several people to create a false alibi and fabricate evidence. Pursuant to a plea agreement, Dantzler agreed to plead no-contest to second-degree sexual assault of a child in case No. 2015CF4454 and bail jumping in case No. 2016CF2154. The circuit court sentenced Dantzler to a total sentence of eighteen years of initial confinement and eight years of extended supervision.

Dantzler subsequently moved to withdraw his pleas alleging, as relevant to this appeal, that his trial counsel was ineffective for failing to inform him that he would be required to register as a sex offender for life. Dantzler argued that counsel told him the registration requirement was only fifteen years. Dantzler claimed he would not have entered his pleas if he was aware he would be registered as a sex offender for life. The circuit court held a ***Machner***[2] hearing and denied the motion. This appeal follows.

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

[2] *See* ***State v. Machner***, 92 Wis. 2d 797, 285 N.W.2d 905 (Ct. App. 1979).

On appeal, Dantzler argues that he is entitled to withdraw his pleas because counsel was ineffective for providing inaccurate sex offender registration information and because he was under the impression that he would register immediately after sentencing, thus allowing the registration period to end prior to the end of his sentence.

"A circuit court should freely allow a defendant to withdraw his plea prior to sentencing if it finds any fair and just reason for withdrawal, unless the prosecution [is] substantially prejudiced[.]" ***State v. Garcia***, 192 Wis. 2d 845, 861, 532 N.W.2d 111 (1995). A defendant who is not aware of a sex offender registry requirement has a fair and just reason for moving to withdraw a plea before sentencing. *See* ***State v. Bollig***, 2000 WI 6, ¶31, 232 Wis. 2d 561, 605 N.W.2d 199. Where a defendant moves to withdraw his plea *after* sentencing, however, the defendant faces a more significant challenge: the defendant must show by clear and convincing evidence that there will be a manifest injustice if the defendant is not allowed to withdraw the plea. *See* ***State v. Taylor***, 2013 WI 34, ¶24, 347 Wis. 2d 30, 829 N.W.2d 482. The manifest injustice test is met if a defendant received ineffective assistance of counsel. ***State v. Bentley***, 201 Wis. 2d 303, 311, 548 N.W.2d 50 (1996).

To establish a claim of ineffective assistance of counsel, a defendant must demonstrate that his lawyer performed deficiently and that deficient performance prejudiced his defense. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A court may reject a claim of ineffective assistance of counsel on either ground. ***Id.*** at 697. "Whether a person was deprived of the constitutional right to the effective assistance of counsel presents a mixed question of law and fact." ***State v. Hunt***, 2014 WI 102, ¶22, 360 Wis. 2d 576, 851 N.W.2d 434. We will uphold the circuit court's factual findings unless they are clearly erroneous. *See* ***id.*** Whether counsel's

performance was deficient and whether the defendant was prejudiced are questions of law that we decide *de novo* based on the circuit court's factual findings. *See* ***id.***

At the ***Machner*** hearing, trial counsel testified that she could not say with certainty that she accurately informed Dantzler about a lifetime sex offender registration; rather, counsel stated that it was "highly likely" she informed him the registration time period was fifteen years. Trial counsel also did not recall whether she told Dantzler when the registry went into effect. Dantzler also testified, telling the circuit court that he and trial counsel discussed sex offender registration multiple times, that counsel told him he would be on the registry for fifteen years, and that he thought he would register immediately after sentencing. Dantzler stated that learning about the lifetime registration felt like "a life sentence" and he would not have entered the pleas if he was aware of the lifetime registration requirement. The postconviction court found that Dantzler was not prejudiced by any misinformation about the sex offender registration requirements and determined that he was not a credible witness.

We agree that trial counsel did not render ineffective assistance warranting plea withdrawal because the requirement to register as a sex offender is a collateral consequence of a plea. *See* ***Bollig***, 232 Wis. 2d 561, ¶27. Failing to advise a defendant of a collateral consequence does not invalidate an otherwise valid plea, *see* ***State v. Myers***, 199 Wis. 2d 391, 394-95, 544 N.W.2d 609 (Ct. App. 1996), and "cannot form the basis of a claim of manifest injustice requiring plea withdrawal." ***State v. Merten***, 2003 WI App 171, ¶11, 266 Wis. 2d 588, 668 N.W.2d 750.

Relying on ***State v. Brown***, 2004 WI App 179, 276 Wis. 2d 559, 687 N.W.2d 543, Dantzler argues that even though sex offender registration is a collateral consequence, he is

entitled to withdraw his pleas because his attorney provided misinformation and he assumed that the registration period would run from the time he began his sentence. Dantzler's reliance on ***Brown*** is misplaced.

In ***Brown***, the plea agreement at issue was specifically structured to avoid the sex offender registration requirement. The prosecutor agreed that the charges Brown would plead to would not require sex offender registry and would not subject Brown to WIS. STAT. ch. 980 commitment after his sentence. ***Brown***, 276 Wis. 2d 559, ¶2. However, "[a]fter his sentence commenced, Brown learned that the plea agreement did not accomplish what the parties had intended." ***Id.*** ¶3. Two of the charges required sex offender registration, and one was a ch. 980 offense. ***Brown***, 276 Wis. 2d 559, ¶3. The circuit court allowed Brown to withdraw his pleas because the whole purpose of the plea agreement was to avoid sex offender registration. ***Id.***, ¶13.

Here, Dantzler was aware that he would be required to register as a sex offender. He claims that he was misinformed about the registration period; however, there is no evidence suggesting that the registration period had any bearing on the plea agreement. As the postconviction court noted, the State's plea offer "spared [Dantzler] a mandatory minimum 25 years of confinement … [and] a trial during which the State would have presented *overwhelming* evidence of guilt." (Italics in original.) Thus, because Dantzler's sex offender registration requirement was an indirect consequence of his conviction and did not go to the core of his plea agreement, counsel was not ineffective for any alleged misinformation pertaining to the registration period.

There is also no support for Dantzler's inaccurate understanding of when the registration period was to begin. Indeed, Dantzler admitted at the ***Machner*** hearing that his attorney did not tell him when the sex offender registration requirement would begin; rather, he "just assumed … that it started right away," and he did not find out until later that it would not begin until he completed his sentence.

Accordingly, we conclude that trial counsel did not render ineffective assistance and Dantzler is not entitled to withdraw his no-contest pleas. We therefore affirm the circuit court.

IT IS ORDERED that the judgments and orders 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