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**DISTRICT II**

July 13, 2022

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

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2021AP535-CR

State of Wisconsin v. Billy Brandale Jackson (L.C. #2014CF10)

Before Gundrum, P.J., Neubauer and Kornblum, 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).**

Billy Brandale Jackson appeals a judgment of conviction entered upon his guilty pleas to first-degree recklessly causing injury while armed and felon in possession of a firearm. Jackson argues that the circuit court erred in denying his presentence motion for plea withdrawal. 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 (2019-20).<sup>1</sup> We affirm.

Jackson was charged in early 2014 with armed robbery, armed burglary, attempted first-degree intentional homicide, felon in possession of a firearm, and obstructing an officer. All but the felon in possession count were charged with the repeater enhancer. According to the complaint, Jackson forced his way into the victim's house, shot the victim in the chest, took some items from the house, and then fled. A jury trial was eventually scheduled for June 2018, after Jackson's fifth trial attorney, Attorney Paul Ksicinski, requested a second continuance.

On the day of trial, at Jackson's direction, trial counsel requested another adjournment, stating that despite his efforts, he was unable to locate a defense witness who allegedly saw the shooting and had testified at Jackson's revocation hearing. The witness was the victim's ex-girlfriend and was somewhere in California. The prosecutor opposed adjournment but stated that given the witness's unavailability, he would likely allow her statements to come in through other means as a hearsay exception. Trial counsel also stated that Jackson wished to have a transcript of a revocation hearing made; the parties only had a digital copy. The circuit court denied Jackson's request to adjourn, given, among other reasons, that jury selection was set to start that day, the court had no prior notice of this request to adjourn, Jackson and his lawyer had plenty of time to prepare, and the transcript would be duplicative.<sup>2</sup>

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> Jackson does not allege that the circuit court erred in denying his adjournment request, or that trial counsel's failure to obtain a transcript or to ensure the witness's appearance was ineffective assistance.

Following a recess, Jackson submitted a completed plea questionnaire and the circuit court was informed that Jackson had decided to take the State's earlier-offered plea agreement.<sup>3</sup> During the course of a fifty-six minute plea hearing, Jackson pled guilty to an amended charge of first-degree recklessly causing injury while armed with a dangerous weapon and to the charge of felon in possession of a firearm. Relevant jury instructions and elements of the crimes were attached to the questionnaire and the court engaged in a plea colloquy during which Jackson acknowledged his understanding of the charges and penalties, told the court that he had enough time to fill out the plea paperwork, and, when asked if he wanted to proceed with his guilty plea hearing, answered "Yes, ma'am." The court accepted his pleas and set the matter over for sentencing.

Months later, Jackson appeared at his sentencing hearing and informed the court that he wished to withdraw his guilty pleas on the ground that his trial attorney failed to explain the "utter disregard" element of the first-degree reckless injury charge. Sentencing was again adjourned and through new trial counsel, Jackson filed a plea-withdrawal motion. The motion alleged that Attorney Ksicinski failed to adequately explain to Jackson the third element of first-degree reckless injury, that of "utter disregard for human life." It also alleged that Ksicinski never attempted to secure the presence of the victim's ex-girlfriend or to obtain a transcript of the revocation hearing.

At the plea-withdrawal hearing, Jackson testified that he felt he had no choice but to plead guilty because his witness was absent and the circuit court declined to adjourn the trial. Jackson said that without the witness, he "had nothing to go with" and believed it was hopeless to go to

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<sup>3</sup> As acknowledged on the record, including by Jackson, the plea agreement varied only slightly from the State's earlier offer, which trial counsel had previously discussed "in great detail" with Jackson.

trial. Jackson also asserted his belief that his lawyer was unprepared to defend him, and he needed the revocation hearing transcript to defend his case.<sup>4</sup> He acknowledged that the case had been set for a jury trial seven times and that he discussed trial strategies with his prior attorneys, not just Ksicinski.

Attorney Ksicinski testified that Jackson was an “intelligent guy” who “knew exactly what he wanted to do with his case.” Ksicinski and Jackson had discussed the option of pleading to reckless injury as early as October 2017; the State consistently maintained that any plea agreement would require Jackson to plead to a charge of first-degree reckless injury, and a prior attorney provided Ksicinski with a partially completed plea questionnaire reflecting the two charges to which Jackson eventually pled guilty, including first-degree reckless injury. Ksicinski testified that Jackson was “very familiar with the charges” and that they had discussed the “utter disregard” element of first-degree reckless injury.

Citing the plea-hearing transcript along with evidence and testimony presented at the plea-withdrawal hearing, the circuit court denied Jackson’s motion, determining that he failed to establish a fair and just reason for plea withdrawal. Crediting Attorney Ksicinski’s testimony, the court found that trial counsel “did, indeed, go over all of the elements, including the definition of utter disregard with Mr. Jackson.” The court found that Jackson had a “very[] detailed understanding about this whole process[,]” and did not believe his testimony that his witness’s absence along with chaotic circumstances in the courtroom forced him to plead guilty or otherwise rendered his guilty pleas involuntary. In further support, the court cited the lengthy and thorough

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<sup>4</sup> Nothing in the record indicates that the witness had been or could be located. Jackson does not allege that his trial counsel provided ineffective assistance of counsel.

nature of Jackson's plea hearing, pointing out the questions asked of Jackson by the plea-taking court and Jackson's solemn answers thereto. The court also found that Jackson understood that his witness's statements could be admitted as a hearsay exception, given that he was present for the relevant on-the-record discussions. Jackson appeals.

A defendant seeking to withdraw a plea before sentencing bears the burden of showing by a preponderance of the evidence that there is a fair and just reason for withdrawal.<sup>5</sup> *State v. Jenkins*, 2007 WI 96, ¶32, 303 Wis. 2d 157, 736 N.W.2d 24. To be "fair and just," the reason must be more than a defendant's change of mind and desire to have a trial. *See State v. Canedy*, 161 Wis. 2d 565, 583, 469 N.W.2d 163 (1991). Fair and just reasons for plea withdrawal include a genuine misunderstanding of the plea's consequences, haste and confusion in entering the plea, and coercion by counsel. *State v. Shimek*, 230 Wis. 2d 730, 739, 601 N.W.2d 865 (Ct. App. 1999).

The decision to permit plea withdrawal prior to sentencing is committed to the sound discretion of the circuit court. *Jenkins*, 303 Wis. 2d 157, ¶30. We will uphold the court's discretionary decision if "the circuit court examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Id.* (citation omitted). The court's findings of fact, including its credibility determinations, will be upheld unless they are clearly erroneous. *Id.*, ¶¶ 33, 46.

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<sup>5</sup> If the defendant makes this showing, then the burden shifts to the State to show that the prosecution would be substantially prejudiced. *See, e.g., State v. Lopez*, 2014 WI 11, ¶¶61-62, 353 Wis. 2d 1, 843 N.W.2d 390. Though the circuit court addressed this claim and the parties have briefed it, we need not reach the issue because we conclude that the circuit court properly determined that Jackson failed to show a fair and just reason justifying plea withdrawal.

The circuit court properly exercised its discretion in denying Jackson’s presentence motion for plea withdrawal. It made factual findings that were supported by the record and were not clearly erroneous. In particular, the transcript of Jackson’s plea hearing supports the court’s finding that Jackson was not forced or coerced to plead guilty, and that he understood and intended to plead to the charges of conviction. *See id.*, ¶¶ 60, 62 (A defendant’s representations during a guilty plea hearing are not taken lightly, and a defendant may not freely elect to disregard them). During the lengthy plea colloquy, Jackson specifically confirmed that he believed he had enough time to speak with his attorney and fill out the plea questionnaire. He confirmed his understanding of the charges and elements, and engaged in the following exchange:

THE COURT: Has anybody made any promises or any threats to you or in any way tried to make you enter a plea today?

THE DEFENDANT: No, ma’am.

THE COURT: I know that there has been the proposed agreement placed on the record. You’ve taken that into consideration in deciding whether or not to enter your plea, right?

THE DEFENDANT: Yes, ma’am.

THE COURT: But beyond that, is there anything that I don’t know about that has people putting pressure on you or that you feel for some reason pressured to enter this plea today?

THE DEFENDANT: No, ma’am.

In addition to the plea-hearing transcript, the testimony and evidence presented at the plea-withdrawal hearing support the circuit court’s finding that Jackson understood the charges and entered his pleas freely and without force. As stated previously, the court credited trial counsel’s testimony and did not believe Jackson’s asserted fair and just reason—that he felt improperly pressured or forced to plead. *Id.*, ¶34 (“If ‘the circuit court does not believe the defendant’s asserted reasons for withdrawal of the plea, there is no fair and just reason to allow withdrawal of

the plea.”). It applied the correct legal standard to the facts of record, explained its rationale, and reached a reasonable result. This constitutes a proper exercise of discretion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*