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DISTRICT III

September 7, 2022

To:

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Circuit Court Judge
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Clerk of Circuit Court
St Croix County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP391-CR State of Wisconsin v. Talia J. Warner (L. C. No. 2019CF516)

Before Stark, P.J., Hruz and Gill, 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).

Talia Warner appeals from an order that denied, without an evidentiary hearing, her postconviction motion for plea withdrawal. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We affirm.

In order to obtain an evidentiary hearing on a postconviction motion, a defendant must allege material facts sufficient to warrant the relief sought. *State v. Allen*, 2004 WI 106, ¶¶9, 36,

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

274 Wis. 2d 568, 682 N.W.2d 433. No hearing is required, though, when the defendant presents only conclusory allegations or when the record conclusively demonstrates that the defendant is not entitled to relief. *Nelson v. State*, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972).

In the context of a postsentencing plea withdrawal motion, the alleged facts must, if true, demonstrate a manifest injustice. *State v. Bangert*, 131 Wis. 2d 246, 283, 389 N.W.2d 12 (1986). As relevant to this appeal, a manifest injustice occurs when the record fails to demonstrate the existence of a factual basis for a plea—that is, the defendant’s conduct actually constitutes the crime charged. *State v. Thomas*, 2000 WI 13, ¶¶14, 17, 232 Wis. 2d 714, 605 N.W.2d 836; *see also* WIS. STAT. § 971.08(1)(b). We independently review whether a defendant is entitled to an evidentiary hearing. *Allen*, 274 Wis. 2d 568, ¶9.

Here, Warner entered a no-contest plea to a single count of second-degree sexual assault of a child under the age of sixteen. She did so in exchange for the State’s agreement to dismiss and read in six related charges (all of which were also alleged to have occurred in St. Croix County) and to cap its sentencing recommendation at five years of incarceration followed by ten years of extended supervision. As to the count of conviction, the complaint charged Warner with having sexual contact with a child, whom we will call “Alex,”² on or about October 11, 2018, through December 26, 2018, in the Town of St. Joseph, Wisconsin. In support of the charge, the complaint alleged that: Warner had been a health teacher at Somerset High School; Alex was a fifteen-year-old student attending the high school; another teacher and students notified the police about possible inappropriate behavior between Warner and Alex; and Alex told police about an incident in which he was in Warner’s car

² This matter involves the victim of a crime. Pursuant to WIS. STAT. RULE 809.86(4), we use a pseudonym instead of the victim’s name.

parked “just down by his house” in St. Croix County when the two were kissing and Warner was rubbing Alex’s thigh and penis outside his clothes for about ten minutes. At the plea hearing, the circuit court found a factual basis for the plea based upon “the stipulation of the attorneys and [its] own review of the [c]omplaint.”

Warner’s plea withdrawal motion claimed that the circuit court failed to adequately ascertain whether Warner’s conduct in fact constituted the crime charged, in violation of its obligations under WIS. STAT. § 971.08(1)(b) and *Bangert*. This failure occurred, Warner asserted, because: (1) the court advised her during the plea hearing that, by pleading guilty, she would be relieving the State of its burden to prove that she had “sexual contact *or intercourse*” with a person under the age of sixteen (emphasis added); (2) the complaint upon which the court relied for a factual basis contained additional allegations regarding a separate incident of sexual intercourse between Warner and Alex that occurred in Warner’s house in Minnesota; (3) the court did not inquire about whether the car incident versus the house incident formed the factual basis for the count of conviction; (4) Warner did not acknowledge that the incident in the car actually occurred; and (5) Warner erroneously believed that she was being convicted for the house incident in Minnesota.

We reject all of Warner’s foregoing arguments. The factual basis obligation does not require a defendant’s personal acknowledgement of his or her alleged conduct. *Thomas*, 232 Wis.2d 714, ¶21. Rather, a circuit court may rely upon a wide range of sources to satisfy its obligation to ascertain a factual basis for a plea—including witness testimony at a preliminary hearing, police records, or a stipulation by counsel as to the facts in the complaint. *Id.* Additionally, in determining whether a manifest injustice has occurred, a reviewing court may consider the totality of the circumstances shown in the record—including postplea materials. *Id.*, ¶18.

The record here conclusively demonstrates that the circuit court satisfied its obligation to ascertain that there was a factual basis for Warner’s plea by personally reviewing the complaint before accepting the parties’ stipulation as to the complaint’s sufficiency. There was no defect or ambiguity regarding the allegations for the pled-to count. The complaint charged Warner with having sexual contact with Alex in St. Croix County, and the allegations that Warner rubbed Alex’s penis in a car in St. Croix County were plainly related to that count. The inclusion in the complaint—as part of its summary of the overall law enforcement investigation—of allegations about additional conduct that occurred in a house in Minnesota in no way undermined the factual basis for the charged count to which Warner pled. The court did not need Warner’s acknowledgement that the incident in the car had occurred in order to ascertain that the conduct Alex described to police constituted the crime charged.

Moreover, Warner subsequently told the author of the presentence investigation report that the criminal complaint overall “capture[d] the situation well,” although she asserted that Alex had initiated the sexual contact in the car, before they “both touched each other.” Given that Warner’s own description of the incident would satisfy the elements of the charged offense, she could not establish a manifest injustice even if there had been a defect in the plea colloquy regarding the factual basis for the plea. Accordingly, the circuit court properly denied the plea withdrawal motion without an evidentiary hearing.

Therefore,

IT IS ORDERED that the order is summarily affirmed. 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