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DISTRICT I

December 6, 2022

To:

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Circuit Court Judge
Electronic Notice

Hon. Joseph R. Wall
Circuit Court Judge
Electronic Notice

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Clerk of Circuit Court
Milwaukee County
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You are hereby notified that the Court has entered the following opinion and order:

2021AP832-CR State of Wisconsin v. Justin Jarvis Hinton (L.C. # 2018CF4812)

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

Justin Jarvis Hinton appeals a judgment convicting him of one count of first-degree sexual assault and one count of burglary. He also appeals an order denying his postconviction motion. Hinton argues that his guilty plea to first-degree sexual assault was not knowingly, intelligently, and voluntarily entered because he did not understand the potential fine he faced.

We conclude that this appeal is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).[1] Upon review, we affirm.

Hinton pled guilty to one count of first-degree sexual assault and one count of burglary. The circuit court sentenced him to a total of twenty-five years of initial confinement and eleven years of extended supervision. Hinton moved to withdraw his plea, arguing that the circuit court incorrectly informed him about the potential penalties he faced. After an evidentiary hearing, the circuit court denied Hinton's motion.[2]

"Under the Due Process Clause of the Fourteenth Amendment to the United States Constitution, a defendant's guilty plea must be affirmatively shown to be knowing, voluntary, and intelligent." ***State v. Cross***, 2010 WI 70, ¶16, 326 Wis. 2d 492, 786 N.W.2d 64. Before accepting a guilty plea, the circuit court must conduct a colloquy with a defendant that is "designed to ensure that a defendant's plea is knowing, intelligent, and voluntary." *See* ***State v. Brown***, 2006 WI 100, ¶23, 293 Wis. 2d 594, 716 N.W.2d 906; ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). The issues that the circuit court must address during the colloquy with the defendant are enumerated in ***Bangert*** and WIS. STAT. § 971.08. As pertinent here, "we are concerned with the court's duty to '[e]stablish the defendant's understanding of … the range of punishments to which he is subjecting himself by entering a plea.'" ***State v. Taylor***, 2013 WI 34, ¶33, 347 Wis. 2d 30, 829 N.W.2d 482 (citation omitted).

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

[2] Hinton's postconviction motion challenged his plea to both counts. On appeal, Hinton challenges only his guilty plea to first-degree sexual assault.

Hinton argues that the circuit court did not correctly inform him during the plea colloquy about the range of punishments he faced when it told him that he faced an unspecified fine and sixty years of imprisonment, with forty years of initial incarceration and twenty years of extended supervision. This information was incorrect because there is no potential fine for first-degree sexual assault.

Where, as here, the circuit court does not properly inform a defendant about the range of punishments he or she faces, "the State has the burden to prove by clear and convincing evidence that the defendant's plea, despite the inadequacy of the plea colloquy, was knowing, intelligent, and voluntary." *See* ***id.***, 347 Wis. 2d 30, ¶32. This presents an issue of constitutional fact. ***State v. Finley***, 2016 WI 63, ¶59, 370 Wis. 2d 402, 882 N.W.2d 761. As such, we will uphold the circuit court's findings of fact unless they are clearly erroneous, but we will independently determine whether, as a matter of law, the defendant's plea was knowing, intelligent, and voluntary. ***Id.***

At the conclusion of the postconviction evidentiary hearing, the circuit court made factual findings that Hinton's counsel reviewed the complaint with Hinton per counsel's usual practice, and the complaint correctly stated that there was no fine. The circuit court also found that it had incorrectly stated that there was an unspecified fine during the plea colloquy, and the plea questionnaire and waiver of rights form incorrectly indicated that there was a fine.

Based on these facts, we conclude as a matter of law that Hinton's plea passes constitutional muster. Hinton was properly told that he faced sixty years of imprisonment but he was given conflicting information about whether he faced a fine. The Wisconsin Supreme Court has explained that "[w]here the sentence communicated to the defendant is higher, but not

substantially higher, than that authorized by law, the incorrectly communicated sentence … will not, as a matter of law, be sufficient to show that the defendant was deprived of his constitutional right to due process of law." ***Taylor***, 347 Wis. 2d 30, ¶33 (citation omitted). ***Taylor*** explained that its decision was in accord with "the great weight of authorities from other state and federal courts [that] reject the notion that the failure to understand the precise maximum punishment is a per se due process violation." ***Id.*** (citation omitted). ***Taylor*** controls the outcome here. The circuit court's statement that Hinton faced an unspecified fine was insubstantial as compared to the sixty years of imprisonment that Taylor faced. *See* ***id.*** As such, Taylor's due process rights were not violated when he entered his plea.

IT IS ORDERED that the judgment and order of the circuit court 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