

The State charged Goss with possession of methamphetamine—a felony—and misdemeanor possession of tetrahydrocannabinols (THC). Although Goss did not qualify for the appointment of counsel by the State Public Defender (SPD), she received court-appointed counsel. On the day scheduled for a plea hearing, Goss submitted a letter to the circuit court requesting a new attorney. In her letter, Goss asserted that her attorney was neither helping her “understand all of the legal processes,” nor “defending [Goss] to the best of her abilities.” Goss expressed her wish to proceed to trial, claiming she was “wrongly arrested.” At the plea hearing that day, the court asked Goss to inform it why she wanted a new attorney. Goss conceded that her counsel was a “good attorney,” but she questioned whether her counsel was fighting for her. The court explained to Goss that she was not required to accept a plea agreement and that her counsel would represent her if she wanted a trial.

When Goss suggested that her counsel was not willing to call specific witnesses at trial, the circuit court noted that, with the exception of whether Goss herself would testify, her counsel was charged with deciding which trial witnesses to call and which trial strategy to pursue. The court then granted a brief recess to allow Goss to confer with her attorney. Upon their return, the court was advised that the parties had reached a plea agreement. The court addressed Goss directly, and she confirmed both that she now wanted to take the plea agreement and that she had enough time to talk to her attorney.

In exchange for Goss’s guilty plea to possession of methamphetamine, the State agreed to recommend that the remaining charge be dismissed and read in. The State also agreed that it would not pursue charges in another case. With respect to sentencing, the State agreed to recommend probation, and the defense remained free to argue. Following a plea colloquy, the

court determined that Goss's plea was knowing, intelligent and voluntary. The court ordered a presentence investigation report and scheduled the matter for sentencing.

Before sentencing, defense counsel informed the circuit court that Goss wanted new counsel and that she recently qualified for appointment of counsel by the SPD. The court granted Goss's request to discharge counsel and rescheduled the sentencing hearing to give the SPD time to appoint successor counsel.

Goss, by newly appointed counsel, filed a presentence motion for plea withdrawal. As purported grounds, the motion recounted that Goss had filed a pre-plea request for new counsel claiming that Goss did not understand the legal process; that defense counsel was given time to discuss matters with Goss; and that Goss subsequently entered a guilty plea. The motion also noted a perceived chain-of-custody issue that could affect the admissibility of certain evidence at trial.

At the motion hearing, Goss explained that she told her previous attorney she wanted to avoid a felony conviction and, following her counsel's negotiations with the State, it was her understanding that she "could get three misdemeanors" if she completed certain outpatient treatment. According to Goss, she did not have the insurance necessary to complete treatment at that time due to a loss of employment. She therefore sought to withdraw her plea to "better understand the legal process" and to potentially have the opportunity to take advantage of the State's earlier plea offer.

The circuit court properly acknowledged that to withdraw a guilty plea before sentencing, a defendant must prove by a preponderance of the evidence that there is a fair and just reason to withdraw his or her plea. See *State v. Jenkins*, 2007 WI 96, ¶32, 303 Wis. 2d 157, 736 N.W.2d

24. The court denied the motion, noting that the State had no obligation to renew its plea offer based on Goss's inability to comply with a condition precedent when the offer was made. The court added that it knew of no authority establishing that a defendant's belief that he or she could now complete conditions to satisfy an earlier plea offer constituted a fair and just reason for plea withdrawal. The court ultimately withheld sentence and imposed two years of probation with various conditions. This appeal follows.

On appeal, Goss challenges the denial of her presentence motion for plea withdrawal. We review a circuit court's decision to grant or deny a presentence motion for plea withdrawal under the erroneous exercise of discretion standard of review. *See id.*, ¶30. Under that standard, we will affirm as long as the court examined the relevant facts, applied a proper standard of law, and used a demonstrated rational process to reach a reasonable conclusion. *Id.*

Goss appears to argue that she was entitled to presentence plea withdrawal because the circuit court erred when denying her request to discharge her attorney. As the State properly notes, however, Goss failed to preserve this claim for appeal. Goss argued to the court that her desire to pursue former counsel's plea agreement counteroffer to the State constituted a fair and just reason for plea withdrawal. She did not argue in her motion or at the motion hearing that she was forced into accepting a plea deal because the court initially refused to allow her to discharge her initial attorney. In her reply brief, Goss insists that the issue is preserved because her motion noted that the court denied her request for new counsel. Although Goss's motion noted that the court denied her request to discharge counsel, she did not assert any connection between that denial and her decision to enter a guilty plea. Goss has therefore forfeited the opportunity to raise this issue for the first time 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, even alleged constitutional errors, generally will not be considered on appeal.”).²

Upon the foregoing,

IT IS ORDERED that the judgment 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

² To the extent that Goss intends to advance an argument on appeal regarding any circuit court error in denying her motion for plea withdrawal, we conclude that such an argument is undeveloped and without reference to the applicable legal standards, and we do not further address it.