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DISTRICT II

June 21, 2023

To:

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Circuit Court Judge
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
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Carlos Bailey
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Christine A. Remington
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1833-CR State of Wisconsin v. Rodney E. Robinson (L.C. #2020CF134)

Before Gundrum, P.J., Neubauer and Lazar, 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).

Rodney E. Robinson appeals from a judgment convicting him of pandering and felony bail jumping and an order denying postconviction relief. On appeal, Robinson argues he should be permitted to withdraw his no-contest pleas because he was given misleading information about the sex-offender registry and whether he would be required to register. 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 (2021-22).[1] We affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Law enforcement arrested Robinson following an undercover operation whereby Robinson, while released on bond for another criminal offense, facilitated the exchange of money for sex with S.M. The State charged Robinson with receiving compensation for felony human trafficking and felony bail jumping. Pursuant to a plea agreement, the State amended the felony trafficking charge to misdemeanor pandering. Robinson pled to pandering and felony bail jumping, and the circuit court sentenced him. As relevant for appeal, the court did not require Robinson to register as a sex offender, and there was no mention of the sex-offender registry at the combined plea and sentencing hearing.

Robinson moved to withdraw his pleas. At an evidentiary hearing on Robinson's motion and as relevant for appeal,[2] trial counsel testified that "Robinson's primary goal was not being on the sex offender registry." Counsel stated he generally advised Robinson that if he "was convicted [of the felony trafficking charge] and if it was found to be sexually motivated," Robinson would be required to register. Counsel explained he told Robinson that "in my opinion that [it] would be found to be sexually motivated." Counsel and Robinson did not discuss the registry further or the additional findings the court would have to make, and Robinson seemed to accept that he would be subject to the registration requirement if he were convicted of human trafficking. When asked why counsel believed the trafficking offense would be found to be sexually motivated, counsel elaborated that his belief was based on the underlying prostitution component and the way the charge was pled. Counsel also testified that he advised Robinson that in counsel's opinion Robinson would not be required to register if Robinson was convicted

[2] In the circuit court, Robinson also moved for plea withdrawal on the basis that the court's colloquy was deficient. *See* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). On appeal, Robinson states he "does not raise this claim on appeal."

of misdemeanor pandering. Counsel agreed that misdemeanor pandering is a discretionary sex-offender-registry offense. Counsel did not prepare for trial because Robinson had indicated an interest in entering a plea to a lesser charge if counsel could get the State to amend the trafficking charge.

Robinson testified he repeatedly told counsel he wanted to go to trial. According to Robinson, counsel never told him that some convictions could result in mandatory sex-offender registration and other convictions required the court to make additional findings before he would be required to register. Counsel also never told him that he could be convicted of felony trafficking without being required to register. Based on counsel's representations, Robinson testified he believed sex-offender registration would have been mandatory if he was convicted of the felony trafficking charge. He explained that had he known sex-offender registration for the felony trafficking charge was discretionary, he would not have accepted the plea deal.

The circuit court denied the motion. It first found that trial counsel's testimony was credible, and Robinson's testimony was not credible. Although Robinson claimed his pleas were not knowing, intelligent, and voluntary because he did not know whether the sex-offender registry requirement was mandatory or discretionary, the court observed that Robinson's postsentencing email to counsel made no reference to the sex-offender registry. The email simply stated that Robinson felt pressured. The court stated that it engaged Robinson in a colloquy at the plea hearing, and Robinson never advised the court that he felt pressured or was unhappy with trial counsel.

As far as the ineffective-assistance-of-counsel claim, the circuit court found that trial counsel was "one hundred percent absolutely correct in his assumptions about what this Court

would have done." If Robinson had been convicted of "the felony charge, [the court] would have made him comply with the sexual offender registry program"; however, because Robinson was only convicted of a misdemeanor, the court would "not have ordered [compliance with the sexual offender registry] and wouldn't have on that type of case." The court determined trial counsel's performance was not deficient and therefore counsel was not ineffective.

On appeal, Robinson argues he should be permitted to withdraw his pleas because they were not knowing, voluntary, or intelligent. He contends that had he known the sex offender registry was discretionary for the felony trafficking charge, he would not have accepted the plea deal. He also argues counsel was ineffective because counsel failed to properly investigate the relevant sex-offender statutes, understand how they applied to Robinson's case, and advise Robinson that, based on the underlying facts in the complaint, "the risk of a Winnebago County circuit court imposing [a registry requirement] in this case was very low."

To withdraw a guilty plea after sentencing a defendant must establish by clear and convincing evidence "that withdrawal of the plea is necessary to correct a manifest injustice." ***State v. McCallum***, 208 Wis. 2d 463, 473, 561 N.W.2d 707 (1997). A manifest injustice can be established if the defendant shows he did not enter the plea knowingly, intelligently, and voluntarily. ***State v. Dillard***, 2014 WI 123, ¶37, 358 Wis. 2d 543, 859 N.W.2d 44. "[M]isinformation given to a defendant about the consequences of conviction may warrant withdrawal of a guilty plea." ***Id.***, ¶39.

Robinson argues he should be permitted to withdraw his pleas because counsel told Robinson that if he was convicted of felony trafficking the circuit court would require Robinson to register as a sex offender, but if he was convicted of misdemeanor pandering, he would not be

required to register. Robinson argues both offenses have discretionary registration requirements, and counsel did not inform him of the additional findings that the court would need to make in order to find the crime sexually motivated and impose registration requirements. He asserts the facts in the complaint would not support a finding that the crime was sexually motivated. Robinson contends he was therefore ill equipped to plead, and he should be permitted to withdraw his pleas.

We disagree. First, the requirement to register as a sex offender is a collateral consequence of a plea. ***State v. Bollig***, 2000 WI 6, ¶27, 232 Wis. 2d 561, 605 N.W.2d 199. Failing to advise a defendant of a collateral consequence does not invalidate a valid plea and "cannot form the basis of a claim of manifest injustice requiring plea withdrawal." *See* ***State v. Merten***, 2003 WI App 171, ¶11, 266 Wis. 2d 588, 668 N.W.2d 750; *see also* ***State v. Kosina***, 226 Wis. 2d 482, 485, 595 N.W.2d 464 (Ct. App. 1999) ("No manifest injustice occurs, however, when the defendant is not informed of a collateral consequence.").

In any event, we also disagree with Robinson's characterization that "he was actively misinformed by trial counsel that: the registry would automatically apply if he were convicted of the trafficking offense, and; he could eliminate that risk by taking the plea deal." Robinson's counsel testified at the postconviction hearing that he advised Robinson that if Robinson was convicted of the felony trafficking offense and if it were found to be sexually motivated, for which counsel offered the opinion that it would be, the circuit court would require him to register. Counsel also testified that, in his opinion, Robinson would not be required to register if he were convicted of misdemeanor pandering. Robinson did not inquire further. The circuit court found counsel's testimony to be credible, noting counsel was "one hundred percent absolutely correct in his assumptions about what this Court would have done." *See* ***State v.***

Terrance J.W., 202 Wis. 2d 496, 501, 550 N.W.2d 445 (Ct. App. 1996) ("When the [circuit] court makes findings of fact as to the credibility of witnesses, we will not upset those findings unless they are clearly erroneous."). These findings do not support a determination that Robinson was provided with such affirmative misinformation by his trial counsel that it would warrant plea withdrawal. *See* ***Dillard***, 358 Wis. 2d 543, ¶¶37, 39.

Robinson next argues he should be permitted to withdraw his pleas because counsel was ineffective. Another way "to demonstrate manifest injustice [to warrant plea withdrawal] is to establish that the defendant received ineffective assistance of counsel." ***Id.***, ¶84. To prove ineffective assistance of counsel, Robinson must show that his trial counsel's performance was deficient and that the deficient performance prejudiced Robinson. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). We need not address both elements of the test if the defendant fails to make a sufficient showing on one of them. ***State v. Jeninga***, 2019 WI App 14, ¶11, 386 Wis. 2d 336, 925 N.W.2d 574. In the context of a plea withdrawal motion, prejudice is established by demonstrating a reasonable probability that, but for counsel's deficient performance, the defendant would have gone to trial. ***Id.***, ¶12.

Here, Robinson cannot establish prejudice. Although Robinson testified he would have gone to trial if he had known the felony trafficking offense had a discretionary registration requirement as opposed to a mandatory one, the circuit court found that Robinson was not credible. In support of the court's credibility determination, the court pointed to the fact that Robinson did not mention the sex offender registry in his communication to counsel after he was sentenced. *See* ***Terrance J.W.***, 202 Wis. 2d at 501. These factual findings are supported by the record and not erroneous. Additionally, trial counsel testified that Robinson indicated an interest in pleading instead of going to trial, and counsel therefore negotiated reduced charges for

Robinson. As stated earlier, the circuit court found counsel's testimony to be credible. *See* ***id.*** We conclude Robinson has failed to establish that he would not have made the decision to enter pleas and, instead, would have gone to trial. *See* ***Jeninga***, 386 Wis. 2d 336, ¶24.

Therefore,

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.

Samuel A. Christensen
Clerk of Court of Appeals