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DISTRICT II

October 4, 2023

To:

Hon. Michael Gibbs
Circuit Court Judge
Electronic Notice

Michael C. Sanders
Electronic Notice

Tara Berry
Clerk of Circuit Court
Winnebago County Courthouse
Electronic Notice

Ronnie L. Thums, #381472
Stanley Correctional Inst.
100 Corrections Dr.
Stanley, WI 54768

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

2022AP1910	State of Wisconsin v. Ronnie L. Thums (L.C. #2004CF132)
2022AP1911	State of Wisconsin v. Ronnie L. Thums (L.C. #2004CF301)

Before Gundrum, 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).

In these consolidated cases, Ronnie L. Thums appeals, pro se, from orders of the circuit court denying his postconviction motions to withdraw his no contest pleas.¹ Based upon our review of the briefs and record, we conclude at conference that these cases are appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).² For the following reasons, we affirm.

¹ Thums also appeals orders denying his motions for reconsideration. Because he develops no arguments specifically related to these orders, we affirm them without separately addressing them.

² All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Pursuant to a plea agreement, Thums pled no contest to three criminal charges in Winnebago County in 2004; other charges and repeater enhancers were dismissed. In 2011, he was convicted of four different felony offenses following a jury trial in Jackson County. *State v. Thums*, No. 2012AP929-CR, unpublished slip op. ¶1 (WI App July 25, 2013). When Thums testified during that trial, the State used his 2004 Winnebago County convictions to impeach him. *Id.*, ¶43. We subsequently affirmed those 2011 convictions. *Id.*, ¶50 (reversing only that part of the judgment imposing a fine).

In 2022, Thums filed motions to withdraw his no contest pleas in his 2004 Winnebago County cases, asserting the State breached the plea agreement by using those convictions to impeach him at his 2011 trial in Jackson County. The circuit court denied the motion without a hearing on the bases that it was conclusory, unsupported by evidence, and “lacking any legal foundation.” Thums moved for reconsideration, which motion was denied. He now appeals.

Whether a plea should be withdrawn is a discretionary decision of the circuit court. *State v. Taylor*, 2013 WI 34, ¶48, 347 Wis. 2d 30, 829 N.W.2d 482. To withdraw a plea, a defendant must establish by clear and convincing evidence that failure to withdraw the plea “will result in a manifest injustice.” *Id.* A defendant is not necessarily entitled to a hearing on his or her motion for plea withdrawal. *State v. Allen*, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. A court must hold an evidentiary hearing only if the motion raises facts sufficient to entitle the movant to relief. *Id.* Whether the motion alleges sufficient facts is a question we review de novo. *Id.* If, however, “the motion does not raise facts sufficient to entitle the movant to relief, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief,” the court’s decision to either grant or deny the motion is

discretionary and we review such decisions under the deferential erroneous exercise of discretion standard. *Id.*

Thums asserts the State breached the plea agreement related to his 2004 Winnebago County pleas and, therefore, he is entitled to withdraw them. In order to be entitled to plea withdrawal on such a basis, a defendant must show that the State materially and substantially breached the terms of the agreement. *See State v. Wood*, 2013 WI App 88, ¶7, 349 Wis. 2d 397, 835 N.W.2d 257. Here, however, Thums does not even assert, much less show, any agreement by the State indicating it would not use the 2004 convictions or facts related to those convictions for impeachment purposes in any future trial of Thums. Indeed, the record indicates that no such agreement was ever made. Without such an agreement by the State in 2004, Thums’s breach of plea agreement contention falls flat as do his postconviction motions.³

IT IS ORDERED that the orders 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

³ Thums briefly raises numerous other issues, but we do not consider them as they are all insufficiently developed. *Clean Wis., Inc. v. PSC*, 2005 WI 93, ¶180 n.40, 282 Wis. 2d 250, 700 N.W.2d 768 (“We will not address undeveloped arguments.”).