

WISCONSIN SUPREME COURT
THURSDAY, APRIL 7, 2016
9:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which reversed a Brown County Circuit Court decision, Judge William M. Atkinson presiding.

2014AP2488-CR

[State v. Finley](#)

This case examines what remedy may be available when a defendant who pleads no contest is misinformed that the maximum penalty that could be imposed is lower than the maximum actually allowed by law, and the sentence imposed is more than the defendant was told he could get.

More specifically here, the Supreme Court reviews whether the defect may be remedied by reducing the sentence to the maximum the defendant was informed and believed he could receive instead of letting the defendant withdraw his plea.

Some background: In 2011 Timothy L. Finley, Jr. was charged with first-degree reckless endangerment with use of a dangerous weapon, substantial battery, strangulation and suffocation, and false imprisonment, all charged as acts of domestic abuse. A charging document filed later added a habitual criminality penalty enhancer.

Finley subsequently reached an agreement with the state whereby he would plead no contest to first-degree reckless endangerment as domestic abuse, with penalty enhancers for habitual criminality and use of a dangerous weapon. The maximum penalty for the offense, with the enhancers, was a term of imprisonment not to exceed 23 years and six months. The plea questionnaire/waiver of rights form completed by Finley's attorney erroneously identified the maximum penalty as 19 years and six months of imprisonment.

At the plea hearing, Finley said that he understood the elements of the offense of first-degree reckless endangerment. The circuit court identified each aspect of the penalty structure and explained that the repeater allegation would increase the incarceration period by not more than an additional six years and the enhancement provision for using a dangerous weapon would increase the term of imprisonment by not more than five years. The court then erroneously said, "So, the maximum you would look at then [is] nineteen years six months confinement. Do you understand the maximum penalties?" Finley said that he did, and the court accepted the plea.

At the sentencing hearing, the state recommended a total sentence of 15 years of imprisonment, consisting of 10 years of initial confinement and five years of extended supervision. The circuit court concluded the maximum penalty was appropriate and imposed the maximum authorized by law, 23 and one-half years, consisting of 18 and one-half years of initial confinement and five years of extended supervision.

Finley filed a post-conviction motion asking to be allowed to withdraw his plea because it was not entered knowingly, intelligently, and voluntarily. Finley alleged that the plea colloquy was deficient because he was not correctly informed of the maximum penalty. He also alleged he was not aware the circuit court could impose a total of 23 and one-half years of imprisonment.

In the alternative to plea withdrawal, Finley asked that the sentence be commuted to 19 and one-half years of imprisonment under State v. Taylor, 2013 WI 34, 347 Wis. 2d 30, 829 N.W.2d 482. The circuit court denied Finley's motion without an evidentiary hearing.

The Court of Appeals reversed and remanded. It concluded that Finley established a Bangert [State v. Bangert, 131 Wis. 2d 246, 389 N.W.2d 12 (1986)] violation as a matter of law, and it remanded to allow the state the opportunity to prove that in spite of the misinformation provided at the plea hearing Finley nevertheless knew the maximum penalty he faced at the time he entered the plea.

The circuit court essentially followed the state's suggestion, concluding without making specific factual findings, that the state met its burden of establishing Finley knew the maximum penalty he faced at the time he entered the plea. However, the court also concluded that, under § 973.13, Stats., and Taylor, the proper remedy in the case, "in the interest of justice," was to commute the sentence "to the maximum represented to him at the time of [the plea hearing]."

Thus, the court ordered that Finley's judgment of conviction be amended to reflect a total sentence of 19 and one-half years of imprisonment, consisting of 14 and one-half years of initial confinement and five years of extended supervision.

The Court of Appeals noted that its opinion in Finley's prior appeal concluded Finley had established a Bangert violation as a matter of law, at least in the sense he made the requisite prima facie showing that he did not know or understand certain information that should have been provided at the plea hearing. It said the purpose for the remand ordered in the earlier appeal was to give the state an opportunity to show by clear and convincing evidence that Finley's plea was in fact entered knowingly, intelligently, and voluntarily, despite the circuit court's failure to advise Finley of the applicable maximum penalty.

The state argued it was not required to show that Finley knew the correct maximum penalty for the offense to which he entered a plea, and that it proved that Finley's plea was sufficiently knowing to meet the manifest injustice test because the sentence was subsequently commuted to the maximum Finley thought applied.

The Court of Appeals disagreed, saying even after "commuting" the sentence, the circuit court did not sentence Finley only to the 12 and one-half years of imprisonment maximum for the underlying offense of reckless endangerment as domestic abuse.

The court pointed out Finley's sentence was commuted not to "the amount authorized by law" or "the maximum term authorized by statute," but rather to the amount Finley misunderstood to be his maximum exposure based on errors surrounding his plea.

The state argues that the appropriate remedy is a reduction of Finley's sentence to the maximum penalty he was informed and believed he could receive. The state says it has never been authoritatively decided whether reduction of a sentence could be a proper remedy where a defendant was misinformed that the maximum penalty was lower than it really was. The state says several prior cases have suggested that sentence reduction is an appropriate remedy.

A decision in this case may clarify how the law applies under these circumstances.