

RECEIVED

10-13-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV
APPEAL NO. 2015AP001546

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

MIGUEL ANGEL LANGARICA,

Defendant-Appellant.

APPEAL FROM AN ORDER OF THE GREEN COUNTY CIRCUIT COURT,
THE HONORABLE THOMAS VALE, PRESIDING, DENYING THE
APPELLANT'S POSTCONVICTION MOTION TO WITHDRAW PLEA

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

HOLEVOET & HANNA, LLC.
131 W. Wilson St. Suite 1104
Madison, WI 53703-3245
(608) 216-7000

Attorneys for Defendant – Appellant
By: Elisabeth Fletcher
State Bar No. 1092692

TABLE OF CONTENTS

	Page
ISSUE PRESENTED.....	4
STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	4
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS.....	5
ARGUMENT.....	5
CONCLUSION.....	8
FORM AND LENGTH CERTIFICATION.....	10

TABLE OF AUTHORITY

	Page
<i>State ex rel. Warren v. Schwarz</i> , 219 Wis. 2d 615, 635, 579 N.W.2d 698 (1998)...	5
<i>State v. Bangert</i> , 131 Wis. 2d 246, 283, 389 N.W.2d 12 (1986).....	6
<i>State v. Brown</i> , 2004 WI App 179, ¶ 12, 276 Wis. 2d 559, 687 N.W.2d 543.....	6,7
<i>State v. Rodriguez</i> , 221 Wis. 2d 487, 492, 585 N.W.2d 701 (Ct. App. 1998).....	5

ISSUE PRESENTED

Whether the trial court erred in denying the appellant's motion to withdraw his plea on the grounds that his plea was not entered knowingly, voluntarily, and intelligently, because he requested information about sex offender registration from trial counsel and was informed that Wisconsin would not require registration, but after sentencing was required to register as a sex offender.

ANSWERED BY THE TRIAL COURT: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The issue presented by this appeal is controlled by well-settled law and therefore the appellant does not recommend oral argument or publication.

STATEMENT OF THE CASE

On September 5, 2014, Mr. Langarica was convicted of Battery and Fourth Degree Sexual Assault, pursuant to a guilty plea entered on that same date, and was sentenced to 18 months of probation. R:18.

Mr. Langarica timely filed notice of intent to pursue post-conviction relief and, on January 21, 2015, submitted a post-conviction motion to withdraw his plea. R:25. Mr. Langarica argued that trial counsel was ineffective and that his plea was not entered knowingly, intelligently, and voluntarily. R:25. An evidentiary hearing was held on that matter on March 13, 2015. R:41.

The trial court denied Mr. Langarica's post-conviction motion on both grounds on July 8, 2015. R:36; R:42. This appeal challenges the trial court's ruling that Mr. Langarica's plea was entered knowingly, intelligently, and voluntarily.

STATEMENT OF FACTS

Miguel Langarica was charged with Disorderly Conduct domestic abuse, Substantial Battery domestic abuse, and Second degree Sexual Assault domestic abuse from an incident that occurred on March 6, 2013. R:1, R:4. Mr. Langarica accepted a plea bargain offer where, in exchange for a guilty plea to Battery and 4th Degree Sexual Assault, the state recommended that sentence be withheld and Mr. Langarica be placed on probation for a period of 18 months. R:18. Prior to accepting that plea agreement, Mr. Langarica requested information from his trial attorney, Timothy Burns, about sex offender registration. R:41-14, 19; App. 6, 11. Attorney Burns told him that fourth degree sexual assault is not a crime subject to registration under Wisconsin law. R:29; R:41-14, 15, 19; App. 6, 7, 11. After Mr. Langarica entered his guilty plea and reported for probation, he was informed that he would have to register as a sex offender in Illinois. R:41-22; App.14.

ARGUMENT

Mr. Langarica's plea was not entered knowingly, intelligently, and voluntarily.

A defendant who seeks to withdraw a guilty or no contest plea after sentencing must establish by clear and convincing evidence that withdrawal is necessary to avoid manifest injustice. *State ex rel. Warren v. Schwarz*, 219 Wis. 2d 615, 635, 579 N.W.2d 698 (1998). "The constitution requires that a plea be knowingly, voluntarily and intelligently entered and a manifest injustice occurs when it is not." *State v. Rodriguez*, 221 Wis. 2d 487, 492, 585 N.W.2d 701 (Ct. App. 1998). A defendant denied a constitutional right may withdraw that plea as a matter of right. *State v. Bangert*, 131 Wis. 2d 246, 283, 389 N.W.2d 12 (1986).

A misunderstanding of the consequences of a plea can undermine the knowing and voluntary nature of a plea. *State v. Brown*, 2004 WI App 179, ¶ 12, 276 Wis. 2d 559, 687 N.W.2d 543. The trial court addressed Mr. Langarica's argument in his post-conviction motion that his plea was not knowingly and voluntarily entered by stating that there was likely no specific question asked as to whether Mr. Langarica understood that there could be collateral consequences of the conviction, but that the court covers an extensive checklist and questionnaire as a part of the plea process, and that the court believed that the plea was entered knowingly and voluntarily. R:42-11, 12; App. 18, 19. However, the argument is not that Mr. Langarica failed to understand a direct consequence of his plea, which is what is addressed in the plea colloquy. The argument is that Mr. Langarica entered his plea based on a misunderstanding of a collateral consequence of his

plea, and that misunderstanding came about because of statements made to him by trial counsel.

The consequences allowing a plea withdrawal are not required to be direct, as “Wisconsin courts have permitted defendants to withdraw pleas that were based on a misunderstanding of the consequences, even when those consequences were collateral.” *Brown* at ¶ 8. *Brown* explains the distinction between when a defendant can withdraw a plea because of collateral consequences. When a defendant lacks information of the collateral consequences, he is not necessarily entitled to withdraw his plea. *Id.* at ¶ 8. However, when a defendant's misunderstanding of the consequences is based on information provided by defense counsel and not the product of his own inaccurate interpretation, Wisconsin courts have allowed a plea withdrawal since that misunderstanding undermined the knowing and voluntary nature of the plea. *Id.* at ¶ 12.

Just as in Mr. Langarica's case, the collateral consequences of concern in *Brown* were sex offender registration requirements. *Id.* at ¶ 2. Mr. Langarica also entered his plea believing he would not be subject to registration as a sex offender. This misunderstanding was not mere ignorance on Mr. Langarica's part, since he sought out information regarding sex offender registration prior to accepting the plea bargain. R: 41-14, 15, 19; App. 6, 7, 11. Mr. Langarica's greatest concern about this plea agreement was whether or not he would be required to register as a sex offender, and his trial attorney knew that “...in particular about accepting this,

he wanted to make sure that he was not required to register as a sex offender, that was a deal breaker.” R:41-14; App. 6.

The trial court stated that reducing the charges would have been a big incentive for Mr. Langarica to take the plea agreement, and if the plea were set aside then Mr. Langarica would be facing felony charges again, and that the court is not sure that he would want to run that risk. R:42-8; App. 17. Of course there were many considerations when deciding whether or not to take a plea agreement, but Mr. Langarica had in fact told the court that he would rather have gone to trial facing felony charges than take a plea agreement that required him to register as a sex offender. R:41-20, App. 12. His trial attorney also stated as much. R:41-16; App. 8. Mr. Langarica's belief that he might have prevailed at trial was not unfounded; the prosecutor stated at plea and sentencing that one of the issues with the case against Mr. Langarica was the inconsistent behavior by the victim, and that “...there would be concerns in terms of being able to prove beyond a reasonable doubt, given some of her behaviors, what occurred.” R:40-14; App. 5.

Sex offender registration was Mr. Langarica's main concern when he made the decision whether or not to take the plea agreement. R:41-14; App. 6. Upon his inquiry, Mr. Langarica's trial attorney told him that Wisconsin would not require him to register as a sex offender because of this conviction. R: 41-15, 19, 20; App. 7, 11, 12. His attorney knew that Mr. Langarica is, and has been during the duration of this case, an Illinois resident. R: 41-15; App. 7. Mr. Langarica

reasonably believed that this information given to him by his attorney applied to him as an Illinois resident. R: 41-15, 19, 20; App. 7, 11,12.. However, as a result of his plea, Mr. Langarica does in fact have to register as a sex offender in Illinois. R:41-22; App. 14. Mr. Langarica is not trained in the law and did not know that there was a possibility that Illinois could impose penalties upon him because of a conviction in Wisconsin, even though Wisconsin did not impose those penalties. R:41-19; App. 12. As in *Brown*, Mr. Langarica should be allowed to withdraw his plea because his misunderstanding was based on information provided to him by trial counsel and this misunderstanding undermined the knowing and voluntary nature of his plea.

CONCLUSION

Because Mr. Langarica did not enter his plea knowingly, intelligently, and voluntarily, he requests that the order of the trial court denying the post-conviction motion to withdraw his plea be reversed.

Dated at Madison, Wisconsin this _____ day of _____, 2015.

ELISABETH FLETCHER, SBN: 1092692
Holevoet & Hanna, LLC
Attorneys for Mr. Miguel Langarica
131 W. Wilson St. Suite 1104
Madison, WI 53703-3245
(608) 216-7000
elisabeth@hh-lawyers.com

CERTIFICATION AS TO FORM/LENGTH AND E-FILING

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1352 words.

I certify I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certification has been served with the paper copies of this brief filed with the court and served upon all opposing parties.

Dated this _____ day of _____, 2015.

ELISABETH FLETCHER, SBN: 1092692
Holevoet & Hanna, LLC
Attorneys for Mr. Miguel Langarica
131 W. Wilson St. Suite 1104
Madison, WI 53703-3245
(608) 216-7000