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STATE OF WISCONSIN  
C O U R T O F A P P E A L S

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DISTRICT I

Case No. 18-AP-1053

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STATE OF WISCONSIN,

Petitioner-Respondent,

v.

MATTHEW CURTIS SILLS,

Respondent-Appellant.

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On Notice of Appeal from a Judgment of Conviction  
Entered in the Milwaukee County Circuit Court, the  
Honorable Jeffrey A. Wagner Presiding.

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REPLY BRIEF

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## TABLE OF CONTENTS

	Page
ARGUMENT .....	1
I. Mr. Sills presented a “fair and just reason” for plea withdrawal. ....	1
CONCLUSION .....	4
CERTIFICATION AS TO FORM/LENGTH.....	5
CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12) .....	5

## CASES CITED

<i>State v. Bangert</i> , 131 Wis. 2d 246, 389 N.W.2d 12 (1986) .....	3
<i>State v. Jenkins</i> , 2007 WI 96, 303 Wis. 2d 157, 736 N.W.2d 24 .....	1
<i>State v. Reese</i> , 2014 WI App 27, 353 Wis. 2d 266, 844 N.W.2d 396 .....	2, 3
<i>State v. Van Camp</i> , 213 Wis. 2d 131, 569 N.W.2d 577 (1997) ....	2

## ARGUMENT

### I. Mr. Sills presented a “fair and just reason” for plea withdrawal.

In this case, the circuit court’s failure to advise Mr. Sills of maximum fine, coupled with Mr. Sills’ testimony that he did not understand the maximum fine, constitutes a fair and just reason for plea withdrawal.

A fair and just reason for plea withdrawal is established when “the defendant shows that the circuit court failed to conform to its statutory or other mandatory duties in the plea colloquy, and the defendant asserts misunderstanding because of it.” *State v. Jenkins*, 2007 WI 96, ¶ 62, 303 Wis. 2d 157, 736 N.W.2d 24. And, in this case, Mr. Sills did exactly that.

The State does not point to anything in the record that rebuts Mr. Sills’ assertion that he did not understand the maximum fine. As the State acknowledges, there is no indication that the circuit court advised Mr. Sills that his plea subjected him to the maximum fine. (See State’s Br. at 11-12). Additionally, the maximum fine was not on the complaint or the plea form. (1:1; 21:1).

The State notes that Mr. Sills “did not raise any issue regarding the fine until he cross-examined [Attorney] Harris at the hearing.” (State’s Br. at 11).

However, the State never objected to the inclusion of this issue during the hearing. *See, e.g., State v. Reese*, 2014 WI App 27, ¶ 14 n.2, 353 Wis. 2d 266, 844 N.W.2d 396 (“This court need not address arguments that are raised for the first time on appeal...”); *State v. Van Camp*, 213 Wis. 2d 131, 144, 569 N.W.2d 577 (1997)(citations omitted) (“As a general rule, this court will not address issues for the first time on appeal.”). The State also had an opportunity to question both Attorney Harris and Mr. Sills about the fine issue, but declined. (59:36, 37; App. 136, 137).<sup>1</sup>

To the extent that the State is suggesting that Mr. Sills personally should have raised this issue, such reasoning should not be adopted. (*See State’s Br.* at 14). Given that the maximum fine was not in the complaint, on the plea form, or referenced by the circuit court, how was Mr. Sills supposed to know to raise this issue sooner? This was Mr. Sills’ attorney’s responsibility. And, as the State’s response acknowledges (at 8), trial counsel did question Attorney Harris and Mr. Sills about this issue. Additionally, trial counsel also explicitly argued to the circuit court that Mr. Sills’ lack of knowledge of the maximum fine was “another basis to allow him to withdraw his plea.” (59:39; App. 139).

Lastly, Mr. Sills respectfully objects to a remand for a retrospective hearing for the State to

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<sup>1</sup> The appendix citations in this reply brief refer to the appendix in Mr. Sills’ initial brief.

establish prejudice. The State did not present any evidence or argument that it would be prejudiced at the time of the hearing. *See, e.g., Reese*, 2014 WI App 27, ¶ 14 n.2.

The State complains that Mr. Sills did not file a postconviction motion under *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). (*See* State’s Br. at 12 n.7, 14). However, the State does not cite, nor is counsel aware of, case law that requires a defendant to re-litigate a *pre*-sentencing plea withdrawal request using law involving *post*-sentencing plea withdrawal requests, such as *Bangert*. Such a requirement would unnecessarily monopolize the already limited resources of the circuit courts when in a case, such as this, testimony has already been taken and the issue ruled upon by the circuit court.

Additionally, the State’s suggestion that Attorney Harris might change his testimony if a *Bangert* hearing was held is speculation—especially given the fact that the maximum fine was not written on the plea form. (State’s Br. at 14). As stated above, testimony was taken from both Attorney Harris and Mr. Sills regarding the fine issue. The State had an opportunity to question them both, but chose not to.

## **CONCLUSION**

Mr. Sills respectfully requests that this Court reverse the circuit court's ruling, order that the plea be withdrawn, and vacate the judgment of conviction.

Dated this 24th day of April, 2019.

Respectfully submitted,

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## **CERTIFICATION AS TO FORM/LENGTH**

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 685 words.

## **CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)**

I hereby certify that 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 certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 24th day of April, 2019.

Signed:

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