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COURT OF APPEALS

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DISTRICT I

Appeal Case No. 2018AP001522-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

ARTTISTIS B. HALL,

Defendant-Appellant.

On Appeal from a Judgment of Conviction Entered in
Milwaukee County Circuit Court,
the Honorable Michael J. Hanrahan, Presiding

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did the circuit court erroneously exercise its discretion
when it denied Mr. Hall's motion to withdraw the plea?

Trial Court Answered: No.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

Mr. Hall was charged in Milwaukee County Court Case number 2016CF003108 with two counts of interference with child custody in violation of Wis. Stats. §§ 948.31(1)(b) and 948.31(3)(a). (R2:1). An amended information charging one count of contempt of court in violation of Wis. Stat. § 785.03(1)(b) was later filed. (R9:1).

On August 31, 2016, Mr. Hall entered a guilty plea to the amended count of contempt of court, and the second count of interference of child custody was dismissed and read-in to still be considered at sentencing. (R67:1-2). The Plea Questionnaire/Waiver of Rights and addendum were filed on that date. (R6:1). The documents were signed by Attorney Givens and Mr. Hall on August 16, 2016. (R6:2-3). At the plea hearing, the court inquired why the State had amended the charge, and the State relayed that the decision was based upon Mr. Hall's minimal criminal record and his willingness to accept responsibility. (R67:2). The State then recited the recommendation it would be making at sentencing and the court asked Mr. Hall if that was his understanding of the plea negotiations. (R67:3). Mr. Hall replied, "yes, your honor." (R67:3). The court asked the parties if they were prepared to go to sentencing that day, and the State replied that it was and informed the court that the victim E.F. was present in court. (R67:3).

The court then spoke with Mr. Hall. (R67:4). The court first asked Mr. Hall, "have you been with us this afternoon?" (R67:4). Mr. Hall informed the court that he didn't understand her question. (R67:4). The court restated the question asking,

“have you been in the courtroom all afternoon” and Mr. Hall replied “yeah.” (R67:4). The court continued speaking with Mr. Hall and went on to say “sir, you understand that you are charged with one count of contempt of court.” (R67:4). Mr. Hall responded, “that is true.” (R:67:4). The court asked Mr. Hall if he understood the maximum penalty and fine and he responded, “yes, I do.” (R67:4). The court went on to discuss the jury instructions for the offense and whether Mr. Hall went over them with his attorney. (R67:5). Mr. Hall responded that he did, but upon further questioning appeared less sure so the court paused the proceedings to allow for Mr. Hall to confer with Attorney Givens. (R67:5). When they resumed the court again specifically asked Mr. Hall if he remembered going over the jury instruction with defense. (R67:5). Mr. Hall responded in the affirmative but the court observed that Mr. Hall did not look sure. (R67:6). The court told Mr. Hall that he needed to understand the jury instructions and he responded that he didn’t. (R67:6). The court again paused the proceedings. (R67:6). When proceedings resumed Attorney Givens relayed that Mr. Hall now remembered. (R67:6). The parties then went off the record. (R67:6). When they continued the court asked Mr. Hall if he remembered going over the jury instructions with defense. (R67:6). Mr. Hall replied, “Yes, I do, ma’am.” (R67:6). The court asked Mr. Hall if he had any questions and he replied that he did not. (R67:6). The court further asked if Mr. Hall understood that the jury instructions show what the State would have to prove and Mr. Hall replied that he did. (R67:6). The court continued on and asked Mr. Hall to relay in his words what he did that was contempt of court. (R67:7). Mr. Hall replied, “Withheld my daughter from the mother.” (R67:7). The court also confirmed with Mr. Hall that there was a court order that granted the mother visitation. (R67:7). The court then asked Mr. Hall how he pleads to the charge and he responded guilty. (R67:7).

The court next reviewed the plea questionnaire and waiver of rights forms with Mr. Hall. (R67:7). Mr. Hall confirmed that he went over the forms with Attorney Givens. (R67:8). Mr. Hall also confirmed that he understood that he was giving up the rights in the forms. (R67:8). Mr. Hall told the court that he graduated from high school and completed two semesters of college. (R67:8). The court further asked if Mr. Hall understood everything that was happening and Mr. Hall

responds, “yes, pretty much.” (R67:8). The court informs Mr. Hall that he needs to understand everything and inquires as to what was confusing him. (R67:8). Mr. Hall responds, “Well, I understand it all; probably don’t agree with it.” (R67:8). The court clarified that there is a difference between understanding what is happening and not liking what is happening and again asked if Mr. Hall understood what was happening. (R67:9). Mr. Hall replies, “yes, I do, ma’am.” (R67:9). The courts follows up by clarifying that Mr. Hall does not like all of what was happening and Mr. Hall responded, “Exactly, your honor.” (R67:9). The court then questioned Attorney Givens about if he went through everything with Mr. Hall and if he explained everything to Mr. Hall. (R67:9). Defense responded by saying,

I did, Your Honor. I met with Mr. Hall while he was in the Milwaukee County jail. We spent a couple of hours going through this, and I - - I tried to take it as slow as possible because I’ve been informed that Mr. Hall has some difficulty understanding legal forms and terms. And I do believe he understood everything. I believe he’s doing this willing or knowingly and understandingly.

(R67:9). The court also inquired whether Attorney Givens discussed motions and defenses with Mr. Hall and defense replied, “Oh, yes, we did.” (R67:9).

The court then turned back to Mr. Hall and asked if he understood that he was giving up his right to a jury trial and Mr. Hall responded, “yes, I do.” (R67:10). The court then went through several more questions about a jury trial explaining a trial and how it works all of which Mr. Hall confirmed he understood. (R67:10). The court asked Mr. Hall if anyone threatened or pressured him to plead guilty and he responded, “no, they did not.” (R67:11). The court also inquired if Mr. Hall was happy with the way Attorney Givens was representing him and Mr. Hall responded, “Yes, I am.” (R67:11). The court concluded with Mr. Hall by asking if he had reviewed the criminal complaint and by asking if the facts stated in the complaint were true. (R67:11). Mr. Hall confirmed that he had reviewed the complaint and that the facts were true. (R67:11). The court finished by accepting Mr. Halls plea and finding Mr. Hall guilty of the amended charge. (R67:12). The court ordered Mr. Hall convicted and entered the judgement of conviction.

(R67:12).¹ The matter was then scheduled for sentencing on September 20, 2016. (R67:12).

The parties ultimately returned for sentencing on October 11, 2016. (R68:1-2). Attorney Givens advised the court that he had been informed by Mr. Hall that morning that he wished to withdraw his plea and wanted another attorney. (R68:2). The court asked on what basis Mr. Hall wished to withdraw the plea and Attorney Givens relayed that he was uncertain. (R68:2). The court then inquired of Mr. Hall what the issue was and he relayed that Attorney Givens hadn't provided him with transcripts. (R68:2-3). The court then discussed the transcript issue with Attorney Givens who relayed that he had discussed transcripts with Mr. Hall and that defense believed that the transcripts had no relevance to the case. (R68:3-4). The court then informed Mr. Hall that there was not a basis to vacate the plea given what had been relayed. (R68:4). The court said that at that point the plea would not be withdrawn but provided Attorney Givens with the opportunity to meet with Mr. Hall to see if there was a viable basis for a motion to withdraw the plea. (R68:4-5). The State then informed the court that EF was present in court. (R68:5). The court then spoke with EF. (R68:6). The court explained to EF that Mr. Hall had asked to withdraw his plea but that the court had provisionally said no while providing Mr. Hall and defense the opportunity to discuss the matter. (R68:6). The matter was then set for a sentencing hearing/status conference on October 25, 2016. (R68:7).

On October 25, 2016, the parties again appeared in court. (R69:1-2). Attorney Givens at that time provided an update to the court saying that since the last court appearance he had spent a great deal of time discussing the matter with Mr. Hall. (R69:2). After their last conversation Attorney Givens believed that the issue was resolved and that the parties would be proceeding to sentencing. (R69:2). Attorney Givens then relayed to the court despite that prior conversation Mr. Hall was once again indicating he wanted to withdraw the plea.

¹ The judgement of conviction was entered on August 31, 2016 by Judge Janet Protasiewicz. The foot note is meant to clarify that Judge Protasiewicz, and not Judge Michael J. Hanrahan, entered the judgement of conviction.

(R69:2). The State then relayed to the court that EF was again present for sentencing, the second time in a month, and the third time the matter had been set for sentencing. (R69:3). The court gave defense a week to file a written motion and set the matter for a motion hearing and not sentencing so EF did not have to be notified again. (R69:5).

On October 25, 2018, Attorney Givens filed a motion to withdraw the guilty plea. (R12:1). Attorney Givens listed four reasons to support withdrawal. (R12:1). The reasons were a learning disability, that Mr. Hall contended he would still get a jury trial after entering a plea, that Attorney Givens pressured Mr. Hall into pleading, and that Mr. Hall is innocent. (R12:1). The parties then returned to court on November 10, 2016. (R70:1). The court informed the parties that all the documents had been gathered and that the court was prepared to address the motion but that instead the court had been informed that defense was moving to withdraw. (R70:2). The court then addressed Mr. Hall by asking if he wanted a new attorney and if Mr. Hall believed defense talked him into pleading. (R70:3). Mr. Hall responded, “ I believe just my misunderstanding of the whole papers and stuff is really the reason for signing. I don’t think he coerced me. I won’t say that.” (R70:3). The court then addressed Attorney Givens saying that Mr. Hall’s response sounded ambivalent but Attorney Givens clarified that it was not ambivalent when he and Mr. Hall spoke. (R70:3). The court allowed Attorney Givens to withdraw and the matter was set for a status of counsel hearing on November 22, 2016. (R70:3-4).

On December 1, 2016, Mr. Hall appeared in court with newly appointed counsel Attorney Wineke. (R72:1-2). On that date the court ordered that Attorney Wineke file any motion within the next ten days and set the matter for a sentencing/motion hearing on January 12, 2017. (R72:5). On January 3, 2017, Attorney Wineke filed a motion to withdraw the plea. (R15:1). That motion listed four grounds for plea withdrawal. (R15:1). The grounds listed were that the plea was entered hastily and in confusion, without adequate consultation with prior counsel, with coercion by prior counsel, and despite the assertion of innocence. (R15:1). Included in the factual background of the motion Attorney Wineke wrote that Mr. Hall signed the plea forms on August 31, 2016, before the plea

hearing. (R15:2). Attorney Wineke further wrote that immediately after signing the plea forms Mr. Hall entered his guilty plea. (R15:2). Attorney Wineke wrote later in the motion that Mr. Hall did not enter his plea voluntarily and that Mr. Hall had always asserted his innocence and never admitted to any of the charges. (R15:3).

On January 12, 2017, the parties appeared in court for a motion hearing. (R73:1). The parties were informed by the court that Attorney Wineke's motion did not establish a factual basis for the court to grant relief. (R73:1). Attorney Wineke then relayed that Mr. Hall was arguing that he did the plea while in jail to get out of jail. (R73:3). Attorney Wineke stated that Mr. Hall acknowledged that he signed the form voluntarily but he felt pressured to get out of jail which is why he went forward with the plea. (R73:3). Attorney Wineke further stated that Mr. Hall had no problem with his prior counsel and that he just made a personal decision to get out of jail. (R73:3). Attorney Wineke closed by stating, "I think his argument is just under - - the fair and just reason would be that he felt he was - - that was unfair." (R73:3-4). The State responded that there is no provision in the law for changing one's mind because they want to get out of jail. (R73:4). The court noted that there was not a, "provision for that" and then continued to review the plea hearing transcript on the record. (R73:4-5). The court noted that during the plea hearing they took a break when Mr. Hall conveyed that he didn't understand something. (R73:4). The court noted that there was no vacillation on the part of Mr. Hall. (R73:5). The court also noted that Mr. Hall expressed an understanding of what was happening and that Attorney Givens had made a record of all of their meetings. (R73:5). The court found that all of Mr. Hall's rights were reviewed. (R73:5). The court further noted that Mr. Hall expressed satisfaction with Attorney Givens' representation. (R73:5). The court found that nothing argued had risen to the level of allowing Mr. Hall to withdraw his plea and denied the motion. (R73:5).²

² The motion to withdraw the plea was denied by Judge Janet Protasiewicz.

STANDARD OF REVIEW

There are three obstacles facing a defendant upon a motion to withdraw a plea prior to sentencing. *State v. Jenkins*, 2007 WI 96, ¶43, 303 Wis. 2d 157, 736 N.W.2d 21. First, one must proffer a fair and just reason for withdrawal. *Id.* Second, the fair and just reason must be one the circuit court finds credible. *Id.* Third, the defendant must rebut evidence of substantial prejudice to the State. *Id.* If the defendant does not overcome those obstacles and the circuit court denies their motion the defendant's burden on appeal becomes relatively high. *Id.* at ¶44. On appeal the defendant faces two additional substantial obstacles. *Id.* The first is the standard of review that requires the reviewing court to affirm unless the circuit court's decision was clearly erroneous. *Id.* The second obstacle is the extensive plea colloquy required of the circuit court. *Id.* The Court notes that more elaborate and comprehensive plea colloquies ensure that pleas are knowing, intelligent, and voluntary but that the corresponding impact is that plea withdrawals are more difficult. *Id.* at ¶60. Further noted is that if a circuit court follows the requirements during plea colloquies, "defendants will ordinarily have difficulty showing a fair and just reason for plea withdrawal if the reason is based on grounds that were adequately addressed in the plea colloquy." *Id.*

In *Libke* the Court noted that the withdrawal of pleas is not a matter of absolute right. *Libke v. State*, 60 Wis. 2d 121, 126, 208 N.W.2d 331, 334 (1973). When discussing that plea withdrawals should be freely allowed prior to sentencing the Court noted that "freely" does not mean automatically. *State v. Canedy*, 161 Wis. 2d 565, 582, 469 N.W.2d 163, 170 (1991). The burden is on the defendant to show a fair and just reason for plea withdrawal and that reason can't simply be the desire to have a trial. *Id.* at 583-584. The standard of proof the defendant must meet is the preponderance of the evidence. *Id.* at 584.

In *Jenkins* the Court emphasizes the remaining importance of the trial court's discretion stating that, "'Discretion' appears to temper 'fair and just reason' in all our cases." *Jenkins* at ¶ 42. Finally, the Court notes that,

Nevertheless, because a fair and just reason will nullify both a sufficient plea colloquy and a constitutionally valid plea, the court may consider whether the proffered fair and just reason outweighs the efficient administration of justice.

at ¶ 63.

The withdrawal of a guilty plea prior to sentencing is a determination addressed to the sound discretion of the trial court. *Dudrey V. State*, 74 Wis. 2d 480, 483, 247 N.W.2d 105, 107 (1976). When addressing a motion to withdraw a plea prior to sentencing the reviewing court must affirm unless the circuit court's decision was clearly erroneous. *Jenkins* at ¶44.

ARGUMENT

I. MR. HALL FAILED TO PROVIDE A CREDIBLE FAIR AND JUST REASON TO WITHDRAW HIS GUILTY PLEA.

A defendant faces three obstacles upon a motion to withdraw a plea prior to sentencing. *Jenkins* at ¶43. The first obstacle a defendant faces is that they must proffer a fair and just reason for withdrawal. *Id.* First, looking to the reasons presented by Mr. Hall and both of his attorneys for his plea withdrawal. There were several different reasons presented in motions and verbally to the court. The first time the issue of plea withdrawal was brought up was at the October 11, 2016, sentencing hearing (R68:1-2). Attorney Givens relayed to the court that he was uncertain as to what basis Mr. Hall had for wishing to withdraw. (R68:2). At that time the court inquired of Mr. Hall what the issue was between Mr. Hall and Attorney Givens and Mr. Hall brought up transcripts that he had not gotten. (R68:2). The court discussed this issue with Attorney Givens and Attorney Givens relayed that he had discussed transcripts with Mr. Hall and that they had no relevance to the case. (R68:3-4). At that time the court found that there is no basis for plea withdrawal but allowed the parties time to meet and discuss the issue. (R68:4-5). So the first issue was explicitly addressed by the court, discussed with Attorney Givens on the record, and properly denied as a basis for plea withdrawal by the court.

On October 25, 2016, the parties returned to court and Attorney Givens updated that he had spent a great deal of time discussing the matter with Mr. Hall and based upon those conversations believed that they would be proceeding to sentencing but now once again Mr. Hall was indicating that he wanted to withdraw his plea. (R69:1-2). Following that court appearance Attorney Givens filed a motion to withdraw the plea. (R12:1). That motion listed four reasons including Mr. Hall's learning disability, a belief that although entering a plea Mr. Hall would still have a jury trial, that Attorney Givens pressured Mr. Hall into pleading, and that Mr. Hall was innocent. (R12:1). The parties return to court on November 10, 2016, the court informs the parties that the documents have been gathered to address the motion but that it now appeared that defense was moving to withdraw. (R70:2). The court asked Mr. Hall directly if he wanted a new attorney and if defense had talked him into pleading. (R70:3). Mr. Hall responds, "I believe just my misunderstanding of the whole papers and stuff is really the reason for signing. I don't think he coerced me. I won't say that." (R70:3). Here Mr. Hall is directly telling the court that he does not believe Attorney Givens coerced him. Mr. Hall also now gives another reason saying that he misunderstood the paperwork. At that time the court allowed Attorney Givens to withdraw.

In order to assess whether Mr. Hall's proffered reasons meet the fair and just standard one may look to the plea colloquy and Mr. Hall's own comments to the court. Starting with the claim that Attorney Givens pressured Mr. Hall into pleading the court specifically asks Mr. Hall about that claim and Mr. Hall unequivocally responds that he doesn't think Attorney Givens coerced him. (R70:3). Moving on to the claims that Mr. Hall misunderstood things and thought he would still have a trial. During the plea colloquy the court spent time making sure Mr. Hall understood what was happening and expressed an understanding. The court took breaks in the proceedings to allow Mr. Hall to discuss and clarify the things he needed to with Attorney Givens. (R67:5-6). The court also repeatedly clarifies with Mr. Hall that he understands what is happening. (R67:6,8). The court also goes through the rights Mr. Hall is giving up specifically the right to a jury trial and walks through different aspects of a jury trial with Mr. Hall. (R67:10). After all of this the court again confirms with Mr.

Hall that he understands what is happening. (R67:10). Mr. Hall also confirms with the court that he is happy with Attorney Givens representation. (R67:11). During the plea colloquy Mr. Hall describes in his own words how he violated the law and clearly pleads guilty. (R67:7). Attorney Givens describes meeting with Mr. Hall for a couple of hours to complete and explain the paperwork especially accounting for any confusion Mr. Hall might have because of any disability. (R67:9). Given the record previously made none of these additional reasons prove to be a fair and just reason for plea withdrawal.

On January 3, 2017, Attorney Wineke on behalf of Mr. Hall filed another motion to withdraw the plea. (R15:1). This new motion also lists four grounds, although some are different than the previously asserted reasons. Those grounds are that the plea was entered hastily and in confusion, without adequate consultation with prior counsel, with coercion by prior counsel, and despite the assertion of innocence. (R15:1). The parties, and now Attorney Wineke as defense counsel, returned to court on January 12, 2017 to address the motion. (R73:1). The court begins by relaying that the defense's motion did not establish a factual basis for relief. (R73:3). At this time Attorney Wineke told the court that the reason Mr. Hall is asking for plea withdrawal is that he made the plea while in jail to get out of jail. (R73:3). Ms. Wineke further stated that Mr. Hall has no problem with his prior counsel and that Mr. Hall just made a personal decision to get out of jail. (R73:3). The court then thoroughly reviewed the plea hearing. (R73:4-5). The court noted that there were breaks in the proceedings when Mr. Hall didn't understand something and that Mr. Hall expressed an understanding of what was happening during the plea colloquy. (R73:4-5). The court noted that during the proceedings there was no vacillation on the part of Mr. Hall. (R73:5). Upon review the court found that all of Mr. Hall's rights were reviewed. (R73:5). The court noted that Attorney Givens made a record of all of his meetings with Mr. Hall and that Mr. Hall expressed satisfaction with Attorney Givens representation. (73:5). The court concluded by finding that nothing argued had risen to the level of allowing Mr. Hall to withdraw his plea and accordingly denied the motion. (R73:5).

The court properly looked to the plea colloquy to compare it to the reasons that Mr. Hall was now giving to

support his plea withdrawal. During the plea colloquy Attorney Givens clearly describes meeting at length with Mr. Hall while Mr. Hall is now saying he entered his plea hastily and in confusion without adequate consultation with prior counsel. (R67:9). The record clearly refutes these statements. In the written motion Attorney Wineke writes that Mr. Hall signed the plea on August 31, 2016, prior to the plea hearing and then immediately entered his guilty plea to support the assertion that Mr. Hall hastily entered his plea. (R15:3). Reviewing the record this is incorrect because Mr. Hall signed the plea paperwork on August 16, 2016, several days prior to when he actually entered the plea. (R6:2-3). This break in time would have given Mr. Hall additional opportunity to reflect on his decision prior to entering the guilty plea on August 31, 2016. Attorney Wineke also brings up coercion by Attorney Givens in the written motion submitted to the court but after consulting with Mr. Hall she conveys to the court that Mr. Hall has no issues with his prior counsel. (R73:3). Here defense on their own has invalidated one of the proffered fair and just reasons. Also Mr. Hall had previously said the same in open court when he told the court that Attorney Givens had not coerced him. (R70:3). The motion also references Mr. Hall's innocence but returning to the plea colloquy Mr. Hall not only pled guilty but in his own words described the actions he had taken that violated the statute. (R67:7). Finally, Mr. Hall claims that he was pressured to plea because he was in custody. The first time this claim was made was in court for the motion hearing and was never advanced in a written motion prior to that date. The argument made was just that it was unfair. This argument does not meet the fair and just standard. The justice system requires that a portion of defendants will sign their plea paperwork while in custody. The fact that they are in custody when signing does not equate to a fair and just reason to later withdraw their pleas. Despite the numerous reasons provided to the court not one reason met obstacle one in advancing a fair and just reason for plea withdrawal. Further, Mr. Hall never showed why it would be fair and just to disregard the solemn answers that he gave in the colloquy when the plea colloquy in this case was more than sufficient.

The second obstacle a defendant faces when entering a motion to withdraw a plea prior to sentencing is that the court must find the fair and just reason credible. *Jenkins* at ¶ 43. In

this case the court went through and addressed the many different reasons advanced by Mr. Hall. Reviewing the record, specifically Mr. Hall's interactions with the court, and documents filed with the court several of the statements made by Mr. Hall and his counsel were conflicting. These conflicting statements go towards the credibility of Mr. Hall's purported reasons for withdrawal. When directly questioned by the court Mr. Hall relayed that that he did not think Attorney Given's coerced him. (R70:3). Through Attorney Wineke Mr. Hall relayed that he had no problem with Attorney Given's representation (R73:3.) Mr. Hall, also through his attorneys, advanced reasons that were directly contradictory to several of the statements he made to the court during the plea colloquy and in further proceedings. Review of the plea colloquy shows that the court took quite a bit of time to ensure Mr. Hall's understanding of the circumstances including taking breaks in the proceedings to clarify any confusion. (R67:7). For Mr. Hall to later say that he didn't understand what was happening when compared to the record made doesn't tend to weigh in favor of Mr. Hall's reasons in that regard being deemed credible.

Further, when looking to the grounds in Attorney Wineke's motion to withdraw, specifically those pertaining to prior counsel, the record clearly contradicts those claims. Attorney Givens made a very clear record when the plea was entered that he had spent a couple of hours going through the paperwork and the case with Mr. Hall to ensure that Mr. Hall understood everything. (R67:9). Further Mr. Hall explicitly told the court that he was not coerced by Attorney Givens. (R70:3). Attorney Wineke also writes that Mr. Hall had asserted his innocence while a quick review of the record shows that Mr. Hall not only pled guilty to the charge but described to the court in his own words what he did that was contempt of court. (R67:7).

Finally, when it comes to credibility the sheer number of reasons advanced to the court in this case weigh against the credibility of the claims. Instead of advancing one reason that would meet the required fair and just standard for plea withdrawal several varying and incongruent claims were advanced. This inability to provide a clear reason that Mr. Hall's plea should be withdrawn weighs against the credibility of the claims.

The third obstacle facing a defendant upon a motion to withdraw a plea prior to sentencing is that the defendant must rebut evidence of substantial prejudice to the State. *Jenkins* at ¶43. In this case, Mr. Hall has not rebutted the evidence of substantial prejudice to the State. The victim in the underlying case is EF. EF was present and in court prepared to make a statement on several different occasions. EF continued disrupting her life to be present in court so her voice could be heard. EF was in court on several dates for these proceedings including August 31, 2016, October 11, 2016, October 25, 2016. (R67:3, R68:5, R69:3). After such close involvement from a victim and the numerous court appearances attended by both the victim and the State allowing Mr. Hall to continue to extend the proceedings by advancing several different reasons to withdraw a plea that was clearly voluntarily and knowingly given would be substantially prejudicial to the State.

Mr. Hall failed to proffer a fair and just reason for plea withdrawal failing to meet obstacle one. The proffered reasons were not found credible by the circuit court failing to surpass obstacle two. Mr. Hall did not rebut the evidence of substantial prejudice to the State required to meet obstacle three. Therefore, Mr. Hall's motion to withdraw his plea prior to sentencing was properly denied.

II. THE CIRCUIT COURT'S DENIAL OF MR. HALL'S MOTION TO WITHDRAW HIS PLEA WAS A PROPER EXERCISE OF DISCRETION.

In *Jenkins* the Court emphasizes the remaining importance of the trial court's discretion stating that, "'Discretion' appears to temper 'fair and just reason' in all our cases." *Id.* at ¶ 42. Finally, the Court notes that, "Nevertheless, because a fair and just reason will nullify both a sufficient plea colloquy and a constitutionally valid plea, the court may consider whether the proffered fair and just reason outweighs the efficient administration of justice." *Id.* at ¶ 63.

The final reason provided by Mr. Hall to the court for why he should be allowed to withdraw his plea was that he felt pressured to get out of jail. (R73:3). This reason would be far

outweighed by the efficient administration of justice. There are numerous defendants who fill out their plea paperwork while in custody but being in custody does not automatically invalidate that paperwork and their subsequent pleas. If feeling pressure due to being in custody at the time of signing plea paperwork was deemed a fair and just reason for withdrawing a plea that would become a substantial road block to the efficient administration of justice. The court's denial of Mr. Hall's motion to withdraw his plea was a proper exercise of discretion and further if Mr. Hall's reason was found to be fair and just it would not outweigh the necessity of the efficient administration of justice.

III. UPON REVIEW OF THE RECORD THE COURT MUST AFFIRM THE CIRCUIT COURT'S DECISION TO DENY MR. HALL'S MOTION.

When addressing a motion to withdraw a plea prior to sentencing the reviewing court must affirm unless the circuit court's decision was clearly erroneous. *State v. Jenkins*, 2007 WI 96, ¶44, 303 Wis. 2d 157, 736 N.W.2d 21. On appeal the defendant faces two additional substantial obstacles. *Id.* The first is the standard of review that requires the reviewing court to affirm unless the circuit court's decision was clearly erroneous. *Id.* The second obstacle is the extensive plea colloquy required of the circuit court. *Id.* The Court in *Jenkins* further notes that, "the extensive plea colloquy is designed to secure a knowing, intelligent, and voluntary plea from the defendant and a developed record from which reviewing courts may evaluate the circuit court's decision." *Id.*

Looking to the circuit court's decision and the reasoning laid out in section one above the circuit court clearly did not erroneously decide to deny Mr. Hall's motion. There was never a clear fair and just reason provided to the court for plea withdrawal and each time Mr. Hall came before the court he would provide different or contradictory responses to questions asked. The court had several interactions with Mr. Hall and when the court questioned Mr. Hall or his counsel Mr. Hall would continue to deny some of the very reasons advanced as fair and just reasons for his plea withdrawal. The court properly looked to the plea hearing transcript to assess the reasons that

Mr. Hall presented to the court for plea withdrawal. The court also appropriately recognized that the reasons advanced were addressed in the plea colloquy and that Mr. Hall had not presented any fair and just reason to disregard the solemn answers Mr. Hall provided during the plea colloquy with the court.

CONCLUSION

For all of the above reasons, the State respectfully requests that this Court uphold the decision of the circuit court denying Mr. Hall's motion to withdraw his plea and uphold the judgment of conviction.

Dated this _____ day of January, 2019.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19 (8) (b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 5,572.

Date

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**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 s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of 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.

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