STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT I

Case No. 2018AP001522-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ARTTISTIS B. HALL,

Defendant-Appellant.

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

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REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. The circuit court erroneously exercised its discretion in denying Mr. Hall's presentence motion to withdraw his plea.

A. Mr. Hall proffered a fair and just reason for plea withdrawal.

The State contends that Mr. Hall has failed to demonstrate that a fair and just reason existed for plea withdrawal. (State's Br. at 9). However, the standard does not impose an onerous burden and instead "contemplates the mere showing of some adequate reason for the defendant's change of heart." *Libke v. State*, 60 Wis. 2d 121, 128, 208 N.W.2d 331 (1973).

In this case, Mr. Hall gave numerous reasons. First, Mr. Hall explicitly informed the Court that his lawyer had failed to obtain materials related to the family court case—the court proceedings from which this criminal case arose—prior to his plea. (68:4). The State argues that this issue has no bearing on the case. (State's Br. at 9). However, there is no evidence in the record that Attorney Givens ever followed through on this investigation, instead relying on his judgment that the investigation was irrelevant. (68:5). That does not rebut Mr. Hall's proffered reason.

Following two hearings at which time Mr. Hall expressed his desire to withdraw the plea, counsel ultimately filed a motion to withdraw the plea. (12). While counsel's draftsmanship may leave something to be desired, the record is clear that it does articulate multiple justificatory assertions—including an affirmative misunderstanding of the criminal court process. (12). Mr. Hall also claimed he was coerced by defense counsel. (12).

In order to rebut the claims in the motion, the State seizes on a single assertion made by Mr. Hall during the hearing on Attorney Givens' motion to withdraw as counsel. (State's Br. at 10). They assert that Mr. Hall explicitly disclaimed any coercion on the part of Attorney Givens. (State's Br. at 10). However, Mr. Hall stood by his claim of coercion in his successor pleading. (15). It is also worth noting that the comment was not made during any testimony about the motion to withdraw the plea and was instead a comment about counsel's representation while counsel was still seated next to Mr. Hall. Mr. Hall's desire to be polite and accommodating of his attorney in this context does not diminish the repeated legal assertions made in his pleadings, especially when the circuit court did not give Mr. Hall an opportunity to develop actual testimony about his lawyer's asserted coercion. More to the point, these arguments do not respond to the other bases for plea withdrawal articulated in the motion—the existence of a learning disability, a misunderstanding about the process, and an actual assertion of innocence. (12). The State also ignores

the assertion that Mr. Hall was now claiming to have a "valid and viable defense" available to him. (12).

The State then claims that the plea colloquy defeats Mr. Hall's claim of a fair and just reason. (State's Br. at 10-11). However, the plea colloquy does not explicitly rebut the allegations in the initial motion. For example, the confluence of attorney pressure and a learning disability may well obscure misunderstandings that were not explicitly revealed during the circuit court's rote plea colloquy. At the same time, Mr. Hall's claim that he could resurrect his jury trial right after a plea, while in tension with the plea colloquy, is not antithetical to his answers therein.

Moving to the second motion, Mr. Hall reiterated his confusion and hasty decision to plead guilty to something he did not do. (15). At the hearing, counsel added that Mr. Hall was also pressured as a result of being held in pretrial custody. (73:4). True, counsel's stumbling and somewhat confusing oral argument did appear to retract—or at the very least muddy—some of the claims consistently made throughout the proceedings, as the State points out. (State's Br. at 11). However, the theme of pressure and misunderstanding remained. And, more importantly, it is unclear to what extent Mr. Hall was ratifying the arguments of counsel, arguments which seem to contradict his own assertions throughout this case.

The State is therefore correct that the record in this case is somewhat muddled—largely as a result of less than stellar representation by prior counsel. However, this should not distract from the fact that Mr. Hall repeatedly gave reasons for why he should be entitled to withdraw his plea—actual misunderstanding of the court process, attorney pressure, circumstantial pressure, deficient attorney investigation, and so on. Any one of these explanations should have been sufficient to satisfy the intentionally lenient fair and just reason test.

Moreover, there is a fundamental reason why the record is somewhat muddled: The circuit court failed to adequately conduct proceedings such that its decision was based on a clear understanding of the fact and circumstances, including the alleged reasons for plea withdrawal. It did not give Mr. Hall the opportunity to testify in support of his claims and instead relied merely on the plea colloquy. Contrary to the State, Mr. Hall does not believe that this colloquy should be dispositive.

The State also quibbles with one other justification offered—Mr. Hall's desire to get out of jail. (State's Br. at 15). It is, however, an empirical fact that pretrial detention induces guilty pleas. *See* Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 STAN L. REV. 711 (2017). It is unclear why the uniquely punitive nature of pretrial incarceration should not be a factor considered by the Court in determining whether a fair and just reason

has been asserted in seeking to withdraw a guilty plea.

And, as to credibility—an issue addressed by the State on page thirteen of the State's brief—it is hard to understand how the Court can make such a judgment without any substantive hearing having been held in this case.

Finally, the State makes an argument that Mr. Hall has failed to rebut evidence of substantial prejudice. (State's Br. at 14). The argument seems to boil down to a claim that the ongoing proceedings were emotionally trying for the mother of his child. (State's Br. at 14). However, the State makes no argument that withdrawal of the plea would result in the inability to present evidence or to litigate its case. Accordingly, the claim of substantial prejudice is underdeveloped.

B. The circuit court erroneously exercised its discretion in denying the motion.

Here, the record is clear that the circuit court applied the incorrect legal standard in assessing Mr. Hall's motion(s). It also did not take testimony from Mr. Hall or his attorney in order to evaluate the credibility of his claims.

As the foregoing demonstrates, Mr. Hall gave numerous explanations as to why he should be entitled to withdraw his plea. The circuit court did not explicitly address any of the assertions made in the motions or advanced in Mr. Hall's statements in

court. Instead, it relied on the colloquy alone. It failed to give Mr. Hall a real opportunity to further develop his claims via testimony and, via its repeated pronouncements prejudging the wisdom of Mr. Hall's motion, appears to have not taken the request to withdraw the plea all that seriously.

Accordingly, Mr. Hall disagrees that the otherwise forgiving standard of review excuses the circuit court's conduct, as the State suggests. (State's Br. at 15). Mr. Hall was entitled to have his claims—which are concerning on their face, as they suggest a confused and vulnerable defendant attempting to undo a decision they feel was the result of excessive pressure.

Accordingly, Mr. Hall asks this Court to reverse and remand for further proceedings.

CONCLUSION

Mr. Hall therefore respectfully requests that this Court reverse the ruling of the circuit court and to remand so that he may withdraw his guilty plea.

Dated this 1st day of February, 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 1,296 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 1st day of February, 2019.

Signed:

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Christopher P. August
Assistant State Public Defender