2018AP002161-CR

WISCONSIN COURT OF APPEALS
DISTRICT IV
APPEAL FROM THE CIRCUIT COURT
OF DANE COUNTY
HONORABLE JILL KAROFSKY

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT,
V.
CRAIG L. MILLER,
DEFENDANT-APPELLANT.

BRIEF AND ARGUMENT OF APPELLANT

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ORAL ARGUMENT NOT REQUESTED

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ISSUE PRESENTED FOR REVIEW

I. Whether Mr. Miller should be permitted to withdraw his plea in order to avoid a manifest injustice.

Craig Miller was convicted, pursuant to a guilty plea, of one count of Disorderly Conduct as a Repeater. Mr. Miller subsequently filed a motion for postconviction relief requesting to withdraw his plea on the grounds that it was not entered knowingly, voluntarily, and intelligently.

The circuit court, Honorable Jill Karofsky, denied the motion after a hearing. Mr. Miller filed a timely Notice of Appeal.

STATEMENT OF REASONS FOR ORAL ARGUMENT AND PUBLICATION

Mr. Miller does not request oral argument and does not recommend that the opinion be published.

STATEMENT OF THE CASE

On August 11, 2017, a criminal complaint was filed in Dane County Circuit Court, charging Craig L. Miller with one count of Substantial Battery, as a Repeater and with Domestic Abuse Assessments, contrary to Wis. Stats. §940.19(2), a class I felony, and one count of Disorderly Conduct, as a Repeater and with Domestic Abuse Assessments, contrary to Wis. Stats. §947.01(1), a class B misdemeanor. [1]

A preliminary hearing was held, and at its conclusion, the court found probable cause and bound the case over for trial. An information was filed charging the same two counts alleged in the criminal complaint.

Mr. Miller subsequently entered a plea of guilty to count two (disorderly conduct as a repeater); count one was dismissed. The court adopted the joint sentencing recommendation, and imposed a bifurcated sentence of one year initial confinement and one year extended supervision.

Mr. Miller filed a Motion for Postconviction Relief, seeking to withdraw his plea. The motion argued that the plea was not entered knowingly, voluntarily,

[1] All references to Wisconsin Statutes are to the 2015-2016 Edition.

and intelligently, due to the effects of Mr. Miller's mental health status. At the time of the plea and sentencing, Mr. Miller had been diagnosed with paranoid schizophrenia.

The circuit court held a hearing on the motion at which Mr. Miller testified. At the conclusion of the hearing, the court denied Mr. Miller's motion. Mr. Miller then filed a timely Notice of Appeal.

STATEMENT OF FACTS

According to the criminal complaint, Officer Goodchild of the City of Madison Police Department reported that on July 30, 2017, A.Y. advised him that she had been punched in the face by her husband, Craig L. Miller. (DOC 1:2; Appendix B:2). A.Y. reported that at around 1:00am, she had been in bed in their shared home at 2832 Coolidge St. in Madison. (DOC 1:2; Appendix B:2). A.Y. reported that Mr. Miller had entered the room, pulled the blankets off A.Y. and started yelling at her for ignoring his calls. (DOC 1:2; Appendix B:2). A.Y. stated that Mr. Miller grabbed the house phone from the bed stand and started going through it. (DOC 1:2; Appendix B:2). A.Y. stated that Mr. Miller was leaning on her to keep her away from the phone. (DOC 1:2; Appendix B:2). A.Y. stated that she pushed Mr. Miller to get him off of her, and that he

punched her in the face with a closed fist. (DOC 1:2; Appendix B:2).

A.Y. stated that it caused her pain when Mr. Miller punched, and that she did not give him consent. (DOC 1:2; Appendix B:2). Officer Goodchild reports that A.Y. showed him a cut on her upper lip, which was still bleeding. (DOC 1:2; Appendix B:2).

Officer Baldukas reported that on July 31, 2017, he was dispatched to Meriter Hospital in reference to a domestic battery. (DOC 1:3; Appendix B:3). Officer Baldukas reported that A.Y. advised him that she was battered by her husband, Mr. Miller, and that as a result of the incident one of her front teeth was chipped. (DOC 1:3; Appendix B:3). Officer Baldukas observed the chipped tooth. (DOC 1:3; Appendix B:3). A.Y. advised that the tooth was chipped already, and that "when he hit it, another piece fell off and it is cracked across the top." (DOC 1:3; Appendix B:3). Officer Baldukas noted that the tooth was obviously cracked with a portion of the tooth broken along a vertical crack. (DOC 1:3; Appendix B:3).

APPELLANT'S ISSUE ON APPEAL

I. Whether Mr. Miller should be permitted to withdraw his plea in order to avoid a manifest injustice.

A. Summary of the Argument

Mr. Miller should be permitted to withdraw his plea in this case in order to avoid a manifest injustice.

The circuit court denied Mr. Miller's motion for postconviction relief in which he sought to withdraw his plea in this case. Mr. Miller argued that he suffered from paranoid schizophrenia, and that as a result his decision to waive his right to trial and instead enter a plea of guilty was not knowing, voluntary, and intelligent.

The circuit court correctly observed that in the history of this case, there had been no issues or questions raised regarding Mr. Miller's competency, and that there had also had been nothing in the record regarding a possible NGI plea.

The court further noted that Mr. Miller's medical records did indicate that he was suffering from paranoid schizophrenia, but that the record did not contain any information about the symptoms or treatment of paranoid schizophrenia. There was no expert testimony as to how that diagnosis may have affected his plea. The court further stated that based on the record, it did not

know how the treatment or medications he was taking affected him.

The court stated that it did not know how paranoid schizophrenia may have compromised the voluntariness of his plea. The court also noted that Mr. Miller had signed the plea questionnaire form indicating that he was not suffering from any mental illness and that he was not taking any prescribed medication.

The court noted that there had been no argument or assertion that the plea colloquy was defective or that Mr. Miller's trial counsel performed ineffectively.

The court concluded that the record was insufficient to establish that Mr. Miller's mental health impeded his ability to focus or understand what was happening at the plea hearing.

Mr. Miller would respectfully disagree that the record is insufficient to establish that his decision-making on the day of the plea hearing was compromised by his mental health diagnosis of paranoid schizophrenia. Mr. Miller was confined in the Dane County jail while this case was pending and prior to his plea hearing. The medical records obtained from the jail indicated the diagnosis. Mr. Miller submits that the records also indicate that he was suffering from feelings of hopelessness and that everything was against him. The records indicate that he was hearing voices in his

head, and that he was having difficulty with focus and concentration as a result. The records arguably indicate a deteriorating condition – his judgment and insight going from intact to good and then to fair – and that that the medication he was taking at the time was not effective. Although there was no expert testimony, there was no testimony or evidence offered by the state to dispute the medical records.

Mr. Miller himself testified at the postconviction motion hearing that that he essentially had given up on proving his innocence in this matter, and accordingly agreed to a plea resolution. He further testified that based on previous court appearances in which he had spoken up (and in one instance, inappropriately), he was reluctant to raise any questions with the court at the time of his plea. He never informed his trial counsel of his mental health issues. He signed the plea form incorrectly stating that he was not suffering from mental health issues or taking medication as part of his feeling that all was lost and that he would simply agree to the plea in order to get the case over.

Mr. Miller submits that the evidence in the record is sufficient to establish that at the time he entered his plea, his decision-making ability was compromised by his mental health, and that his plea was not entered knowingly, voluntarily, and intelligently. Accordingly,

it would constitute a manifest injustice to deny his request for plea withdrawal.

B. Standard of Review

Whether a plea is knowing, intelligent, and voluntary is a question of constitutional fact. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006). The reviewing court accepts the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous, but determines independently whether those facts demonstrate that the defendant's plea was knowing, intelligent, and voluntary. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

C. Relevant Law

When a defendant seeks to withdraw a plea after sentencing, he must establish by clear and convincing evidence that refusal to allow withdrawal of the plea would result in a manifest injustice. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006). One way for a defendant to meet this burden is to show that he did not knowingly, intelligently, and voluntarily enter the plea. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

When a guilty plea is not knowing, intelligent, and voluntary, a defendant is entitled to withdraw the plea as a matter of right because such a plea "violates

fundamental due process." State v. Brown, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

D. Argument

Mr. Miller's motion for postconviction relief alleged that at the time of his plea, his decision-making ability was compromised by the effects of paranoid schizophrenia. The motion alleged that Mr. Miller's medical records from the relevant time period indicated that he was being treated with medication for a diagnosis of schizophrenia-paranoid, and that he was reporting difficulty with concentration and focus, hearing voices, and feelings of hopelessness. (DOC 26:3: Appendix D:3).

As a result, his decision for forgo a jury trial and enter a plea of guilty was made under duress, and his plea was not entered voluntarily or intelligently. (DOC 26:3-4; Appendix D:3-4).

Mr. Miller's motion addressed the fact that during his plea hearing, he had affirmed the information contained on the plea questionnaire (which included that he was not receiving treatment or taking medication for a mental illness). (DOC 19:1)(DOC 39:4)(DOC 26:4-5; Appendix D:4-5). Mr. Miller had not informed his counsel of the fact that he had been diagnosed with paranoid schizophrenia and that he was taking prescription medication. (DOC 26:4; Appendix D:4).

Mr. Miller pointed to a prior court appearance in which he had been admonished by the court for an outburst, and another court appearance in which his prior counsel made some unflattering comments about Mr. Miller. (DOC 26:4-5; Appendix D:4-5). In doing so, he provided a plausible explanation for the inaccurate responses on the plea questionnaire and in court. See State v. Basley, 2008 WI App 253, ¶18, 298 Wis.2d 232, 726 N.W.2d 671 (Ct.App.2006).

1. At the time of the plea, Mr. Miller's decision-making ability was compromised by the effects of paranoid schizophrenia and his plea was entered under dures.

Mr. Miller testified at the motion hearing, and his medical records were introduced as exhibit one. [2]

Mr. Miller testified that he was currently taking medication for a diagnosis of paranoid schizophrenia. (DOC 40:15; Appendix F:15). He further testified that he had been taking this new medication for about three months, and that it had been very helpful in making him

[2] In the court record, the medical records (exhibit one) are listed in two parts – Document 28 and Document 32. For the purposes of the postconviction motion and appeal, Mr. Miller's references to his medical records are limited to Document 32. Document 32 is attached as Appendix E.

feel more relaxed and focused. (DOC 40:15-16; Appendix F:15-16).

Mr. Miller testified that at the time the case was pending, he was confined in the Dane County jail with the intention to take this case to trial. (DOC 40:16; Appendix F:16). Mr. Miller had difficulty recalling the details of the plea hearing; specifically, reviewing the plea questionnaire with his counsel or the court inquiring about his waiver of his right to trial. (DOC 40:19-20; Appendix F:19-20). Mr. Miller stated that at the plea hearing, he did not want to argue with his lawyer or the court. (DOC 40:21; Appendix F:21).

Mr. Miller did recall that when he was presented with the state's offer to resolve the case with a plea, he didn't know what to do. (DOC 40:18; Appendix F:18). Mr. Miller testified that he "felt trapped" because no one was hearing anything he said. (DOC 40:20; Appendix F:20). Mr. Miller stated that at that time, he could not focus and his mind was racing. (DOC 40:20; Appendix F:20). According to Mr. Miller, "I threw my hand up." (DOC 40:19; Appendix F:19).

Mr. Miller's testimony is consistent with his medical records from that same period. The records indicate that Mr. Miller's judgment and insight had gone from "intact" in September, 2017 (DOC 32:62; Appendix E:61) to "good" and then to only "fair" by

early November, 2017. (DOC 32:47; Appendix E:46). As Mr. Miller argued at the motion hearing, it is reasonable to conclude that a change in judgment and insight that goes from "intact" to only "fair" represents a deterioration in judgment and insight. (DOC 40:93; Appendix F:9).

Notably, in September, 2017 Mr. Miller had reported that he was hearing voices and that the medication he was on at the time was not working. (DOC 32:61; Appendix E:60)(DOC 40:95; Appendix F:95). He also had reported a lack of focus and the feeling that the victim witness person "was out to get him." (DOC 32:61; Appendix E:60). A couple weeks later, he reported that the voices were getting worse and that "everything is working against me." (DOC 32:58; Appendix E:57)(DOC 40:95; Appendix F:95). A notation indicates that his medication had been increased. (DOC 32:58; Appendix E:57). About ten days later, he reported that the medication was helping with the voices a little bit, but that he was having trouble with memory and focus, and feeling that no one is trying to help him. (DOC 32:55; Appendix E:54)(DOC 40:96; Appendix F:96).

A few weeks later – early November, 2017 – his medical records indicate that his judgment and insight were only "fair." (DOC 32:47; Appendix E:46). The

plea and sentencing hearing in this case took place on November 10, 2017.

Mr. Miller submits that the combination of his testimony and medical records from the time leading up to the plea hearing provide clear and convincing evidence that his plea was a product of duress rather than a voluntary and intelligent choice. Throughout this period, Mr. Miller reported feeling that no one was helping him; that everything was against him; that the victim witness person was out to get him. These somewhat irrational complaints are consistent with a person suffering the effects of a mental illness like schizophrenia. Mr. Miller reported a lack of ability to remember and focus, and his records indicate an arguably deteriorating mental condition despite an increase in medication. On the day of the plea hearing, Mr. Miller had essentially given up on the idea of attempting to establish his innocence to the charges, and "threw up" his hands in defeat. His acceptance of the state's plea offer was, accordingly, not a voluntary and intelligent choice.

The state questioned Mr. Miller at the motion hearing. Mr. Miller indicated that on the day of the plea hearing, he was in court within five minutes of his discussion of the plea offer with counsel. (DOC 40:39; Appendix F:39). He testified that when he comes to

court, it's a "nightmare" and that "the voice is telling you, you know, 'they're going to do what they're going to do anyway.'"(DOC 40:81-82; Appendix F:81-82).[3]

During its questioning of Mr. Miller, the state mentioned the fact that in prior court appearances, Mr. Miller had requested that his counsel call a specific witness at the preliminary hearing, and had questioned the court's ruling (DOC 40:69,71; Appendix F:69,71), and had made an argument in favor of a bond modification motion. (DOC 40:75; Appendix F:75).

However, those hearings occurred months prior to the plea hearing in this case. The fact that Mr. Miller made a request to his counsel about calling a witness, or asked the court to change a bond condition to allow contact with his wife, is not inconsistent with his argument for the withdrawal of his plea. Indeed, in both of those instances when Mr. Miller spoke out during a hearing, his request was denied. Part of what he was

[3] During Mr. Miller's responses to the state's questions, the question arose as to whether Mr. Miller is alleging ineffective assistance of counsel as to the performance of one of his prior attorneys. As appellate counsel explained at the hearing, despite some of Mr. Miller's comments at the hearing, based on appellate counsel's discussions with Mr. Miller and prior counsel, he is not raising the issue that his prior counsel performed deficiently and that the deficient performance prejudiced Mr. Miller. (DOC 40:57-60; Appendix F:57-60). The court concluded that although Mr. Miller had indicated that he felt rushed and may not have understood everything on the day of the plea, it was not asserted to be a consequence of the performance of trial counsel. (DOC 40:86; Appendix F:86).

feeling by the time of the plea hearing was that it didn't matter what he did or said – everything was against him. The fact that on a prior occasion he had spoken up in court and been rebuked contributed to his eventual "willingness" to give up his right to have a trial and instead enter a guilty plea. Perhaps a person who does not suffer from paranoid schizophrenia would have reacted or interpreted those events differently. However, by the time Mr. Miller got to court for his plea hearing, his mental health condition had arguably worsened to the point where it interfered with his ability to rationally and effectively evaluate the situation and make an intelligent decision and voluntary choice as to whether to go to trial.

2. Mr. Miller's plea was not entered knowingly, voluntarily, and intelligently, and it would constitute a manifest injustice not to permit him to withdraw the plea.

When a defendant seeks to withdraw a plea after sentencing, he must establish by clear and convincing evidence that refusal to allow withdrawal of the plea would result in a manifest injustice. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006). One way for a defendant to meet this burden is to show that he did not knowingly, intelligently, and

voluntarily enter the plea. State v. Brown, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

When a guilty plea is not knowing, intelligent, and voluntary, a defendant is entitled to withdraw the plea as a matter of right because such a plea "violates fundamental due process." State v. Brown, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906 (2006). The defendant maintains the burden of proof, and the facts adduced must show manifest injustice by clear and convincing evidence before the defendant may withdraw his plea. State v. Brown, 2006 WI 100, ¶42, 293 Wis. 2d 594, 716 N.W.2d 906 (2006).

Mr. Miller respectfully submits that the facts of record demonstrate by clear and convincing evidence that his plea was not entered knowingly, voluntarily, nd intelligently. Accordingly, it would constitute a manifest injustice not to permit him to withdraw his plea in this case.

In denying his postconviction motion, the circuit court concluded that Mr. Miller had not met his burden. (DOC 40:119; Appendix F:119). The court further found that the record did not establish that Mr. Miller's mental health impeded his ability to focus or understand what was happening at the plea hearing. (DOC 40:119; Appendix F:119). Although the court concluded that Mr. Miller was "stressed out" at the time of his plea, it

did not create "a serious flaw in the fundamental integrity of the plea." (DOC 40:119; Appendix F:119).

Mr. Miller submits that his sense of hopelessness and feeling stressed out at the time of his plea was more than what would be typical in a situation where a person goes to court to face a pending criminal charge. Mr. Miller's medical records indicate that his judgment and insight were deteriorating by the time of his plea, going from intact to good, and then to only fair. Although there is no expert testimony in the record to further explain these notations, the record of the notations themselves indicates a worsening condition. The records indicate that Mr. Miller's medication had been increased in order to address the issues presented by his condition. He reported hearing voices and feeling that everything and everyone was against him.

Mr. Miller submits that his testimony and medical records clearly establish that at the time of his plea, his ability to make decisions was not the same as a person who was not suffering from paranoid schizophrenia. Throughout the period that the case was pending, and up to and including the time of the postconviction motion hearing, Mr. Miller has maintained his innocence. Although that is not a factor in determining whether a manifest injustice exists, it raises a question as to why Mr. Miller would have

suddenly agreed to plead guilty absent some compromising factor in his decision-making. The record in this case answers that question – his deteriorating mental state as a result of the diagnosis of paranoid schizophrenia impeded his ability to make a decision on whether to waive his right to a trial.

Does the fact that Mr. Miller's judgment and insight (and as a result, his ability to make decisions like whether to waive his right to a trial) was worsening cast doubt on the fundamental integrity of his plea? Mr. Miller would answer that question in the affirmative.

The significance of a defendant's mental health and its relation to the validity of his or her plea in a criminal case is reflected in the fact that it is one of the questions asked on the plea questionnaire form. If Mr. Miller had responded in court on the day of the plea hearing in a manner that was consistent with his medical records, it is unlikely that the court would have accepted his plea. If Mr. Miller had advised the court at his plea hearing that he was being treated for paranoid schizophrenia, that he was hearing voices, that he felt like everyone was out to get him, and that his judgment and insight were deteriorating despite taking his medication, the court arguably would not have accepted his plea under those circumstances. The fundamental

integrity of any plea entered under such conditions would be in doubt.

Self-imposed duress does not render a plea involuntary. See State v. Goyette, 2006 WI App 178, ¶29-30, 296 Wis. 2d 359, 722 N.W.2d 731 (Ct.App.2006). However, the effects schizophrenia are not examples of self-imposed duress, such as one's religious beliefs or the desire to shield others from prosecution. The latter examples are akin to motivations that induce; the effects of a mental health illness are arguably more akin to forces that compel. See State v. Goyette, 2006 WI App 178, ¶30, 296 Wis. 2d 359, 722 N.W.2d 731 (Ct.App.2006) citing Rahhal v. State, 52 Wis.2d 144, 151-152, 187 N.W.2d 800(1971)(the distinction between a motivation which induces and a force which compels the human mind to act must always be kept in focus).

The record in this case is consistent with the argument that Mr. Miller entered a guilty plea in this case as a result of the compulsive force of his mental health. The record indicates that the compulsive force of paranoid schizophrenia overcame his intention to take the case to trial, and caused him to enter his plea of guilty. Accordingly, it represents a serious flaw in the fundamental integrity of the plea, and as such, unless Mr. Miller is permitted to withdraw his plea it would

constitute a manifest injustice. See State v. Nawrocke, 193 Wis. 2d 373, 379, 534 N.W.2d 624 (Ct.App.1995).

CONCLUSION TO BRIEF AND ARGUMENT

Mr. Miller respectfully requests that this court reverse the denial of his postconviction motion, vacate the judgement of conviction, and withdraw his plea in this case.

Dated this 4th day of February, 2019.

Respectfully submitted,

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Certification of Brief Compliance with Wis. Stats. § 809.19(8)(b) and (c)

I hereby certify that this brief conforms to the rule contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 4052 words.

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Electronic Filing Certification pursuant to Wis. Stats. §809.19(12)(f).

I hereby certify that the text of the electronic copy of this brief is identical to the text of the paper copy of the brief.

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Certification of Appendix Compliance with Wis. Stats. § Wis. Stats. 809.19(2)(a).

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an Appendix that complies with Wis. Stats. § 809.19(2)(a) and contains: (1) a table of content; (2) the findings or opinions of the trial court; (3) a copy of any unpublished opinion cited under Wis. Stats. § 809.23(3)(a) or (b);

and (4) portions of the record essential to the understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if required by law to be confidential, the portions of the record included in the Appendix are reproduced using first names and last initials instead of full names of persons, specifically juveniles and parents of juveniles, with a notation that the portion of the record has been so reproduced as to preserved confidentiality and with appropriate references to the record.

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