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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2018AP002161-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

CRAIG L MILLER,

Defendant-Appellant.

PLAINTIFF-RESPONDENT'S BRIEF

ON APPEAL FROM THE CIRCUIT COURT OF DANE COUNTY,
BRANCH 12, THE HONORABLE JILL J. KAROFSKY, PRESIDING

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STATEMENT ON PUBLICATION AND ORAL ARGUMENT

Oral argument is not necessary because all arguments and relevant precedent are set out in the parties' briefs and the record on this appeal.

This opinion should not be published. The issues presented involve the application of well-settled law to a discrete fact pattern, and the Court's opinion will have no significant value as precedent.

STATEMENT OF THE ISSUE

Did the trial court correctly deny Miller's "Postconviction Motion to Withdraw Plea"?

STATEMENT OF FACTS

On August 11, 2017, a criminal complaint was filed in Dane County Circuit Court charging the appellant, Craig L. Miller, with one count of Substantial Battery, contrary to Wis. Stats. § 940.19(2), with Domestic Abuse Assessments

and as a Repeater; and one count of Disorderly Conduct, contrary to Wis. Stats. § 947.01(1), also with Domestic Abuse Assessments and as a Repeater.

A Preliminary Hearing was held on September 5, 2017. (6:1) At the conclusion of the hearing, the court found probable cause and bound Miller over for trial. (37:15-16)

On November 10, 2017, a Plea/Sentencing Hearing was held. Miller appeared with counsel Attorney Patrick Schilling. (18:1-2) Pursuant to a negotiated plea agreement, Miller entered a plea of guilty to count two of the criminal complaint (disorderly conduct as a repeater); count one (substantial battery) was dismissed. (39:7) Miller and his trial counsel reviewed, filled out, and signed a Plea Questionnaire. (39:3-4) Attorney Schilling indicated that there was no reason not to accept Miller's plea. (39:7-8) The court found that Miller was entering his plea knowingly, intelligently, and voluntarily. (39:8) The court went over the Plea Questionnaire and Waiver of Rights form with Miller and Miller indicated that he understood the form and was able to answer the questions. (39:4-6) The court further asked Miller if all the information on the form was true and accurate. (39:4) Miller answered in the

affirmative. (19:1-2; 39:4-7). At sentencing, the court adopted the joint recommendation of a bifurcated sentence consisting of one year initial confinement and one year extended supervision. (39:12-14).

On June 15, 2018, Miller filed a Motion for Postconviction Relief to withdraw his plea indicating that the plea was a product of duress, produced by his medical/psychological condition and medication, and therefore the plea was not entered knowingly, voluntarily and intelligently. (26:1-7) On July 17, 2018, the State filed a brief requesting that the circuit court deny Miller's Postconviction Motion. (27:1-8) On October 22, 2018, a postconviction hearing was held. Testimony and jail medical records were received by the circuit court in reference to Miller's request to withdraw his plea in this case. The circuit court denied this motion. (33:1-2)

ARGUMENT

I. MILLER HAS FAILED TO PROVE, BY CLEAR AND CONVINCING EVIDENCE, THAT HIS PLEA WAS NOT KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY ENTERED AND THEREFORE A WITHDRAWAL OF HIS GUILTY PLEA IS NOT NECESSARY TO CORRECT A MANIFEST INJUSTICE.

A. Standard of Review

When a defendant seeks to withdraw a guilty plea after sentencing, he must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in "manifest injustice." *State v. Thomas,* 2000 WI 13, ¶ 16, 232 Wis.2d 714, 605 N.W.2d 836. 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. Trochinski,* 2002 WI 56, ¶ 15, 253 Wis.2d 38, 644 N.W.2d 891; *State ex rel. Warren v. Schwarz,* 219 Wis.2d 615, 636, 579 N.W.2d 698 (1998); *State v. Krawczyk,* 2003 WI App 6, ¶ 9, 259 Wis.2d 843, 657 N.W.2d 77.

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. Van Camp,* 213 Wis.2d 131, 139, 569 N.W.2d 577 (1997). Whether a plea is knowing, intelligent,

and voluntary is a question of constitutional fact. *Trochinski,* 253 Wis.2d 38, ¶ 16, 644 N.W.2d 891. Appellate Courts (COA) accept the circuit court's findings of historical and evidentiary facts unless they are clearly erroneous but independently determine whether those facts demonstrate that Miller's plea was knowing, intelligent, and voluntary. *Id.*

B. Application of Relevant Principles of Law.

Miller has the burden to state sufficient material fact that, if true, would grant Miller relief. State v. *Bentley*, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996). Miller must then 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). The "manifest injustice" test requires a defendant to show "a serious flaw in the fundamental integrity of the plea." *State v. Nawrocke,* 193 Wis.2d 373, 379, 534 N.W.2d 624 (Ct.App.1995) (citing *Libke v. State,* 60 Wis.2d 121, 128, 208 N.W.2d 331, 335 (1973)). There is no indication in the record or Miller's briefs that there was assertion that the plea colloquy was defective or that Miller's prior counsel was

ineffective. Further, Miller has not claimed that he was confused or unable to understand what was going on at the plea hearing (40:108).

A plea will not be voluntary unless the defendant understands the nature of the constitutional rights he is waiving. *State v. Bangert,* 131 Wis.2d 246, 265, 389 N.W.2d 12 (1986). To ensure a knowing, intelligent, and voluntary plea, *Bangert* also requires that a trial judge explore the defendant's capacity to make informed decisions. *Id.* At 265-266. There is no indication in the record or claim from Miller that at the plea hearing the circuit court failed to fulfill her duties as laid out in Wis. Stat. § 971.08 and Wis. JI—Criminal SM-32 (1985), Part V, Waiver of Constitutional Rights.

"If a defendant does not understand the nature of the charge and the implications of the plea, he should not be entering the plea, and the court should not be accepting the plea. On the other hand, if a defendant does understand the charge and the effects of his plea, he should not be permitted to game the system by taking advantage of judicial mistakes." *Brown*, 2006 WI 100, ¶37, 293 Wis. 2d

594, 716 N.W.2d 906. There is no indication that Miller did not understand the nature of his charge or his plea.

Miller instead is claiming that he suffered from paranoid schizophrenia, and that as a result, his decision to waive his right to a trial and instead enter a plea of guilty was not knowing, voluntary, and intelligent.

The circuit court held a hearing on October 22, 2018 to determine if Miller had met his burden to establish by clear and convincing evidence that there was a serious flaw in the fundamental integrity of the plea. (40:111). The circuit court found that she could not find from the record that there was evidence that Miller's mental health impeded his ability to focus or understand what was happening at the plea hearing. (40:119) The circuit court found that Miller was stressed out but that stress did not meet the burden of a serious flaw in the fundamental integrity of the plea hearing. (40:119).

The circuit court subsequently denied Miller's motion for postconviction relief after making the following findings:

1) There is nothing in the record regarding Miller's competency to proceed. (40:111)

2) There is nothing in the record regarding an NGI plea claiming that Miller had been suffering from a mental illness such that he did not appreciate his conduct. (40:112)

3) There is absolutely no evidence regarding the symptoms of paranoid schizophrenia or the treatment of paranoid schizophrenia. The circuit court only had medical records that Miller suffers from paranoid schizophrenia. However, there was no expert testimony as to how that diagnosis would have affected his plea. (40:112)

4) There is nothing in the record regarding how the medications Miller was taking leading up to the plea hearing were helping with the symptoms of paranoid schizophrenia or if there were any side effects of those medications. (40:113)

5) There is nothing in the record whether or not Miller's paranoid schizophrenia was severe or not

severe, or if you can have severe or not severe paranoid schizophrenia. (40:113)

6) There is nothing in the record indicating whether or not schizophrenia impairs someone’s ability to act voluntarily. (40:113)

7) Miller signed the bottom of the plea form, indicating that he was not suffering from a mental illness at the time of the plea, and that he was not taking medications. (40:114)

8) Miller did not claim that prior counsel, Mr. Schilling, was ineffective on November 10, 2017. (40:114)

9) The plea colloquy on November 10, 2017 was not deficient and Miller is not claiming that it was deficient. (40:114-115)

10) Miller has had prior contact with the criminal justice system, making him familiar with the system. (40:115)

11) There is no testimony on what it means in the medical reports when his (Miller’s) judgment goes

from “intact” or “good” to “fair.” There is no evidence as to what that means or who is making those notations. The circuit court found that she had a hard time placing a lot of significance on those statements. (40:115)

12) Statements from Miller regarding feeling hopeless and frustrated prior to plea hearing were understandable due to the criminal case, revocation, mixed feelings for the victim regarding her recantation and desire to divorce her, hearing voices, and frustrations with his lawyer. (40:115-117)

13) In a medical note six days before the plea, Miller’s appearance, speech, affect and behavior was appropriate; his mood was angry and irritable; he was oriented to person and place; his intelligence was average; his memory was intact; and his insight and judgment were fair. (40:117)

14) As to Miller’s claim that he was afraid to speak in court, the circuit court had no information as to whether Miller was afraid to speak in the courtroom

on the date of the plea. However, the circuit court noted that Miller has not been shy about speaking up in court at the preliminary hearing or on the date of the post-conviction hearing. (40:118-119)

15) From the record, the circuit court could not find there was evidence that Miller's mental health impeded his ability to focus or understand what was happening at the plea hearing. (40:119)

Miller's motion is conclusory and incomplete and the circuit court was correct to deny the motion. Nothing in the motion or in the record explains how his paranoid schizophrenia, medications, and voices affected his decision-making and why it should allow him to withdraw his plea. There was no expert testimony as to how that diagnosis may have affected his plea. In fact, the only evidence in the record that we have is that Miller has a diagnosis for paranoid schizophrenia and was being treated in the jail. The statements that "someone is feeling hopeless or if they feel paranoid or if they feel hopeless that things are out of their control or everyone's against them" and "are *probably consistent* with a person who is dealing with paranoid schizophrenia" are pure speculation

(40:94). The circuit court made the proper inquiries at the plea hearing and then later at the post-conviction hearing. Miller admits that his paranoid schizophrenia and medications neither make him confused or unable to understand what was going on, nor that the medication side effects were causing a problem, nor that his judgment was poor. (40:108-109).

Miller now claims that at the time of the plea he had essentially given up on proving his innocence and agreed to a plea resolution. In fact, per a negotiated plea, Miller received the benefit of the State dismissing the sole felony charge, a Substantial Battery. The defense also limited the facts to which Miller was pleading as the factual basis during the plea and sentencing on November 10, 2017. (39:7, 11-12) This was likely a strategic decision on the part of the defense to minimize his exposure.

There is no evidence that the diagnosis of paranoid schizophrenia or the medication for the treatment of this mental illness caused duress on Miller to the point that his plea was involuntary. There has been no expert testimony as to whether the mental illness or medications

would have produced duress that would negate the voluntariness of the plea. The defense claims that it is "reasonable to conclude" that when a change in judgment and insight that goes from "intact" to "fair" represents a deterioration in judgment and insight. This is merely a conclusory statement. At the time of the plea, Miller was being treated in the jail for his mental illness. (28:1-75) Miller now claims 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." Again, there is no evidence that this defendant's diagnosis of paranoid schizophrenia, for which he was being treated the past 30 years, caused a serious flaw in the fundamental integrity of the plea.

The circuit court was correct when she noted there was nothing in the record regarding competency or NGI, and Miller is still not claiming that he did not understand nor that he did not appreciate this conduct. The circuit court was correct in finding that Miller was very stressed out by what was going on in his life, most notably: a potential revocation for which he was trying to work out an ATR; the criminal case; frustrations with this wife and his lawyer;

and his desire to get a divorce. (40:117-118) His mental health concerns, which were being treated with medications, seemed to pale in comparison to the rest of his concerns.

Miller failed to prove by clear and convincing evidence that a refusal to withdraw his plea would result in a manifest injustice. The Circuit Court correctly held that Miller failed to show that his plea was not knowingly, intelligently and voluntarily entered.

CONCLUSION

Based on the reasons stated above, the Plaintiff-Respondent requests that the decision of the trial court be affirmed.

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CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced using the following font:

> Monospaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 13 pages.

Dated: _____.

Signed,

_____
Attorney

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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.

Dated this _____ day of April, 2019.

_____
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