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2018AP002161-CR

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

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

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REPLY BRIEF AND ARGUMENT OF APPELLANT

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## ARGUMENT

- I. Mr. Miller disagrees with the state's argument that he failed to establish by clear and convincing evidence that his plea was not knowingly, intelligently, and voluntarily entered.

Mr. Miller disagrees with the state's argument that his plea was not entered knowingly, intelligently, and voluntarily. Accordingly, Mr. Miller submits that it would constitute a manifest injustice to not permit him to withdraw the plea.

At the postconviction motion hearing, Mr. Miller presented evidence of his psychiatric condition during the time frame surrounding his plea. Mr. Miller also testified as to his mental state during that period, and its effects on his decision to waive his right to trial.

Mr. Miller submits that the confluence of these compelling factors results in a serious flaw in the fundamental integrity of his plea. See State v. Nawrocke, 193 Wis.2d 373, 379, 534 N.W.2d 624 (Ct.App.1995).

The state's brief argues that despite the evidence that Mr. Miller was suffering the effects of paranoid schizophrenia at the time he made the decision to forgo his right to trial and enter a plea, there is no expert testimony as to how that diagnosis would have affected

his plea. (State's Brief, p.5). Mr. Miller submits that such testimony would have been speculative at best. Rather than offer the opinion of an expert who had not examined Mr. Miller at the relevant time, Mr. Miller provided his own firsthand account of how his psychiatric condition affected him. Notably, the state does not dispute Mr. Miller's testimony as to how his condition affected him, but instead argues that his mental state was "understandable" due to the circumstances at the time. (State's Brief, p.7).

Mr. Miller indicated that he felt compelled to accept the state's plea offer because he that no one was trying to help him (DOC 32:55). In part due to the voices in his head, he could not focus. (DOC 40:20; Appendix A:20). With his judgment and insight deteriorating, Mr. Miller testified that "I threw up my hands" and essentially gave up on attempting to demonstrate at trial that he was not guilty. (DOC 40:19; Appendix A:19).

As evidence of his deteriorating mental state, Mr. Miller pointed to the notations in his medical records that describe his mental state going from "intact" to "good" and then to only "fair." (Brief of Appellant, p.14-15)(DOC 32:47, 50, 53). The state, concurring with the circuit court, argues that little significance should be attached to these notations because there is no

evidence as to “what that means.” (State’s Brief, p.7)(DOC 40:115; Appendix A:115). Mr. Miller disagrees, and submits that expert testimony is not necessary to draw a logical and common sense conclusion that a mental state that goes from “intact” to merely “fair” is deteriorating.

To clarify, Mr. Miller is not arguing that his psychiatric condition interfered with his ability to understand what was happening at the plea hearing itself. (State’s Brief, p.8). Rather, Mr. Miller’s argument is that his ability to make sound decisions, such as whether to give up his right to trial, was compromised by his condition. Mr. Miller testified that he had a short period of time to consider the state’s offer and that he was in court entering his plea within minutes of discussing it with trial counsel. (DOC 40:39; Appendix A:39). As his medical records indicate, he was hearing voices in his head and having difficulty focusing on the task at hand. His decision to accept the state’s plea offer was more of a surrender than a rational and coherent choice, and Mr. Miller submits that the record clearly and convincingly demonstrates that his psychiatric condition was responsible for his deteriorating judgment and insight.

Certainly, any defendant confined in the county jail and facing a pending felony charge and possible

divorce would likely be suffering from stress. (DOC 40:117-118; Appendix A:117118). The relevant difference in the present case is that most defendants do not have to deal with those stressful realities against the backdrop of a serious psychiatric condition that adversely affects the person's ability to focus and make decisions.

The limitations created by Mr. Miller's psychiatric condition were not self-imposed pressures, such as those discussed in Craker v. State, 66 Wis.2d 222, 229, 223 N.W.2d 872 (1974). In that case, the court emphasized the distinction between "a motivation which induces and a force which compels the human mind to act." Craker v. State, 66 Wis.2d 222, 229, 223 N.W.2d 872 (1974). Mr. Miller's unequivocal testimony at the postconviction motion hearing described a force which compelled him to act – to give up on a trial and accept the state's plea offer. His testimony is supported by the contemporaneous notes in his medical records.

The state submits that Mr. Miller's decision was likely a strategic response to a plea offer in which the sole felony charge would be dismissed. (State's Brief, p.9). There is no indication in Mr. Miller's testimony that the reason he gave up his right to trial was to minimize his exposure. Indeed, if that were the case, it is unlikely that Mr. Miller would now be seeking to

withdraw his plea and thereby increase his potential exposure.

The current record establishes that at the time Mr. Miller made the decision to waive his right to trial and enter a plea he was suffering from the effects of a serious psychiatric condition – paranoid schizophrenia. The record further establishes that Mr. Miller reported hearing voices and an inability to focus. The record establishes that Mr. Miller’s mental state (judgment and insight) had gone from intact (i.e. not impaired) to only fair at the time of the plea. Those notations logically indicate two things – that Mr. Miller’s mental state was impaired at the time he made the decision to accept the state’s offer, and that his mental state was getting worse as time went on.

Mr. Miller’s testimony and his medical records from the relevant time period provide clear and convincing evidence that the confluence of factors compelled him to accept the state’s plea offer. Accordingly, Mr. Miller’s plea was not entered voluntarily, and it would constitute a manifest injustice not to permit him to withdraw his plea and exercise his right to have a trial.

CONCLUSION AND REQUEST FOR RELIEF

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 19<sup>th</sup> day of April, 2019.

Respectfully submitted,

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

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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 1063 words.



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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