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STATE OF WISCONSIN
C O U R T O F A P P E A L S
DISTRICT III

Case No. 2022AP390-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

RODNEY STEVEN TEETS, JR.,
Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND AN
ORDER DENYING PLEA WITHDRAWAL ENTERED IN
THE CIRCUIT COURT FOR VILAS COUNTY, THE
HONORABLE NEAL A. NIELSEN, III, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Defendant-Appellant Rodney Steven Teets, Jr., asked the circuit court to vacate his plea on the ground that the State breached the plea agreement. Is Teets entitled to have his plea vacated?

The circuit court answered no.

This Court should answer no.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither. Teets requests publication (Teets's Br. 3), but he acknowledges that the legal standards that apply here are well established. This case presents a routine application of those legal standards, and publication is not warranted.

INTRODUCTION

Under an unusual term of Teets's plea agreement, the circuit court allowed him to remain out on bond for four weeks after he was convicted on two felony counts, with a requirement that he report to jail on noon on the day following the July 19 family memorial service for his mother. The family cancelled the memorial service, and the State moved to revoke his bond. Teets sought specific performance of the plea agreement on the grounds that attending the service wasn't part of the terms and he was entitled to be out on bond until July 20. On July 13, the circuit court made a factual finding that the purpose of the time out on bond was to permit Teets to attend the service. It concluded the cancellation meant the purpose of that part of the agreement had been frustrated and that rendered it unenforceable. Teets's bond was revoked.

He moved for plea withdrawal on grounds of breach. The circuit court made a factual finding that the agreement's

terms permitted him to attend the service, and when the service was cancelled, no term permitted him to remain out of custody. The circuit court's factual finding is well supported by the record and is not clearly erroneous. This Court is bound by such a finding, and accordingly should affirm the circuit court's conclusion that there was no breach and that Teets is entitled to no relief.

Even if this Court concludes that the State breached its agreement by moving to revoke Teets's bond a week before originally agreed upon, that breach is not the sort of material and substantial breach that warrants plea withdrawal. Teets obtained extensive concessions from the State in the plea agreement, and even with the alleged breach, he received an almost unheard-of 20 days out on bond after his felony convictions. Under these circumstances the fact that he was out of custody for 20 days rather than 27 is not a substantial breach.

This Court should affirm.

STATEMENT OF THE CASE

Teets entered a no-contest plea to charges on June 23, and he was allowed to remain out of custody for 27 days until the day after the July 19 memorial service for his mother.

Teets was charged in this case, 2019CF102, with two felony counts of sexual assault of a child under 16 years old. (R. 1:1.) The complaint alleged that Teets had performed oral sex on his girlfriend's 14-year-old daughter and had penetrated her vagina with his thumb and finger. (R. 1:4–5.) At the time of his plea in this case, Teets faced charges in three other cases as well. (R. 146:2.) In a separate case, 2020CF71, he was charged with three counts of felony bail jumping. (R. 146:2.) He was also charged separately with misdemeanor disorderly conduct, misdemeanor bail jumping, and three counts of felony bail jumping in Vilas County cases

2019CM98 and 2020CF122. (R. 114:6.) Teets had been referred for charges in three Vilas County cases and one Eagle River case. (R. 146:3.)

The day Teets's jury trial was to commence (R. 146:2), he agreed to enter a no-contest plea to one count of felony sexual assault of a child and one count of felony bail jumping (R. 100:1). In exchange for Teets's no-contest plea to these charges, the State agreed to the following: 1) to dismiss and read in the remaining eight charges in the four cases; 2) not to file charges in the four pending referrals¹ but to have the pending referrals read in; and 3) to cap its sentencing recommendation at nine years of initial confinement and 12 years of extended supervision. (R. 114:6; 146:3, 5.)

The sentencing hearing was set for September 23, 2021. (R. 146:13.)

Following the plea colloquy, the circuit court addressed a final matter about the parties' negotiations concerning Teets's remand to custody:

We have spent some time this morning before calling the case because as part of negotiations for resolution of this matter today, there were some agreements made by the parties relative to custody and remand.

(R. 146:12.)

The State then explained that parties had agreed that the terms of Teets's continued bond would permit him to remain out of custody with GPS monitoring, attend his mother's funeral in Kankakee, Illinois on July 19, 2021—written proof of which had been provided to the State—and report to the Vilas County jail by noon on July 20, 2021. (R. 146:14–15.) The circuit court explained that the parties had

¹ The State provided the agency case numbers for the pending referrals: Vilas County files 18-001480, 18-000247, 19-003341, and Eagle River file 19-4263. (R. 146:3.)

asked the Court to approve this provision, which permitted him to remain out of custody from June 23, 2021, to July 20, 2021:

[T]ypically, this would be the date when your bond would be revoked and you would be remanded to custody. It was part of the agreement of the parties and it was brought to the Court's attention yesterday about the fact that your mother passed this spring and due to the COVID situation, there has not been ability of your family to hold a memorial service. I'm sorry for your loss. The discussions between the parties were to permit you to attend that service. And I'm not going to disturb the agreement here.

(R. 146:1, 17–18.)

At a later hearing, the circuit court referenced the fact that Teets's "original proposal," which the State had rejected, had been for him "to remain free on bond pending sentencing." (R. 136:19.)

The circuit court granted the State's motion to revoke Teets's bond 20 days later when it learned that the memorial service had been cancelled.

Teets's brother in Kankakee contacted the Vilas County Sheriff's Office on July 7, 2021, and reported that he had cancelled the memorial service. (R. 105:2.) When a detective followed up on the report, she learned that "the reason for canceling the service was that [the brother] had seen in the Vilas County News that Rodney [Teets] was being released per his bond to attend his mother's service in Kankakee, Illinois and that he did not feel it was appropriate and did not want Rodney at his house due to family concerns." (R. 105:2.) The family had "no future plans to reschedule." (R. 105:3.) The family had not yet informed Teets that the service had been cancelled out of fear that Teets "would 'run.'" (R. 105:2.)

Based on this information, the State moved on July 8, 2021, to revoke Teets's bond. (R. 104:1.) Teets moved for specific performance of the plea agreement, asking the circuit

court “to enforce the State’s promise” that he would be allowed to remain out on bond until July 20. (R. 106:2.)

At a hearing on July 13, 2021, the circuit court heard arguments on both motions. (R. 139:2–4.) The circuit court recalled that “the morning of the plea when there was a flurry of discussions regarding the arrangements that were to be made for Mr. Teets to attend his mother’s memorial service” and that it had “signal[ed] to the parties ahead of time that [it] would not oppose this provision.” (R. 139:4, 5.) The circuit court concluded that the cancellation of the memorial service “change[d] the equation in a very significant way.” (R. 139:5.) The circuit court found that the “provision that [Teets] could attend his mother’s memorial service in Kankakee, Illinois [on] the 19th of July” was “part and parcel of the agreement not to revoke bond” on the day of his plea hearing. (R. 139:4–5.)

As for the motion for specific performance, the circuit court stated, “[I]t seems to me that if we’re talking about enforceability of a plea agreement on the basis of a notion of contractual obligation, the object of the contract, if you will, has been eliminated.” (R. 139:5.) It stated, “[T]here really remains no basis for the Court to authorize continued release from custody or enforce a so called agreement when the purpose of the agreement has been eliminated.” (R. 139:6.)

The circuit court ordered Teets to surrender to the sheriff’s custody by noon that day.² (R. 139:6.)

² At a later hearing in this case, the circuit court noted that “as we know from allegations in another filing, that didn’t happen. The GPS got cut and there were other issues involving Mr. Teets which certainly could give rise to the suspicions of his intentions regarding returning to custody.” (R. 136:19.)

Teets moved to withdraw his plea on the ground that the State had breached the plea agreement.

Teets moved to withdraw his plea prior to sentencing, arguing that the State had “reneged on” its agreement to allow Teets to remain out of custody until July 20, 2021, and that Teets was therefore entitled to plea withdrawal. (R. 119:2, 3.)

At the motion hearing, Teets’s counsel argued that the issue presented was a factual one: “You know it really comes down I think to a factual determination of what the terms of the plea agreement were.” (R. 136:3.) Counsel acknowledged that Teets had no grounds to withdraw his plea if the agreement that he could remain out of custody until July 20 “was conditional on the fact that there was going to be a memorial service.” (R. 136:3.)

The circuit court made a factual finding that the terms of the agreement to remain out of custody were not “for [a] specific amount of time” but rather were “for a very specific purpose and that happened to be the date that was expressed and acknowledged.” (R. 136:20.)

It noted that other facts supported this finding: that the State had rejected Teets’s “original proposal” to remain out on bond pending sentencing, that it had agreed as “really kind of an act of compassion” to remain free for the funeral, and that the date it asked for Teets to return to custody was “as short as possible following the intended memorial service.” (R. 136:19.)

Based on that finding, the circuit court concluded that the State’s motion to seek revocation of the bond when “the purpose of the continued release was no longer there” did not breach the plea agreement. (R. 136:20.) It referenced the frustration doctrine, a principle of contract law that holds that, absent contract language to the contrary, a party has no duty to perform an act when the agreement’s principal

purpose has been frustrated by an event that is not the party's fault. (R. 139:5–6.)

Following his sentencing (R. 133), Teets appealed the denial of his motion to withdraw his plea. (R. 164:1.)

ARGUMENT

Teets is not entitled to relief because the State did not breach the plea agreement, but even if it did, the breach was not material and substantial.

A. Standard of review.

“The terms of the plea agreement and the historical facts of the State’s conduct that allegedly constitute a breach of a plea agreement are questions of fact” and are reviewed under the clearly erroneous standard of review. *State v. Williams*, 2002 WI 1, ¶ 5, 249 Wis. 2d 492, 637 N.W.2d 733. A reviewing court is “bound not to upset the trial court’s findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence.” *State v. Turner*, 136 Wis. 2d 333, 343, 401 N.W.2d 827 (1987).

Whether a breach occurred, and, if so, whether it deprived the defendant of a material or substantial benefit for which he or she has bargained, are questions of law that are reviewed *de novo*. See *Williams*, 249 Wis. 2d 492, ¶ 20; *State v. Quarzenski*, 2007 WI App 212, ¶ 19, 305 Wis. 2d 525, 739 N.W.2d 844.

B. A defendant is entitled to have his plea vacated when the State commits a material and substantial breach of the plea agreement.

A defendant has a due process right to the enforcement of a negotiated plea agreement. *Williams*, 249 Wis. 2d 492, ¶ 37. Because “[a]n agreement by the State to recommend a

particular sentence may induce an accused to give up the constitutional right to a jury trial. . . . once an accused agrees to plead guilty in reliance upon a prosecutor's promise to perform a future act, the accused's due process rights demand fulfillment of the bargain." *Id.* (footnote omitted).

But "not all conduct that deviates from the precise terms of a plea agreement constitutes a breach entitling the defendant to relief." *State v. Campbell*, 2011 WI App 18, ¶ 7, 331 Wis. 2d 91, 794 N.W.2d 276. "An actionable breach must not be merely a technical breach; it must be a material and substantial breach." *Williams*, 249 Wis. 2d 492, ¶ 38. "A material and substantial breach is a violation of the terms of the agreement that defeats the benefit for which the accused bargained." *Id.* (concluding that the prosecutor's failure to relate the sentence agreed upon in a neutral fashion was a material and substantial breach of the agreement); *State v. Matson*, 2003 WI App 253, ¶ 25, 268 Wis. 2d 725, 674 N.W.2d 51 (concluding that the investigating officer's letter to the court in which he recommended a sentence greater than that which the prosecutor requested in the plea agreement was a material and substantial breach of the agreement); *State v. Howard*, 2001 WI App 137, ¶¶ 16–17, 246 Wis. 2d 475, 630 N.W.2d 244 (concluding that a prosecutor's recommendation of a consecutive, rather than a concurrent, sentence was not merely a technical violation); *State v. Howland*, 2003 WI App 104, ¶ 37, 264 Wis. 2d 279, 663 N.W.2d 340 (concluding that the prosecutor's comments to the presentence investigative report's drafter that resulted in an amended report recommending a greater sentence was a material and substantial breach of the plea agreement).

The remedies for a material and substantial breach of a plea agreement are vacation of the plea agreement or resentencing. *Id.*

"The burden is on the party arguing a breach of a plea agreement to show, by clear and convincing evidence, that a

breach occurred and that the breach [was] material and substantial.” *State v. Deilke*, 2004 WI 104, ¶ 13, 274 Wis. 2d 595, 682 N.W.2d 945.

C. A contract’s provision is unenforceable when its principal purpose is frustrated by a change in circumstances.

“A plea agreement is analogous to a contract, though the analogy is not precise.” *Deilke*, 274 Wis. 2d 595, ¶ 12. Courts “draw upon contract principles in determining the rights of the parties to a plea agreement and whether there has been a breach that is material and substantial.” *Id.*

This Court quoted Restatement (Second) of Contracts § 265, when discussing the contract law doctrine of frustration. “The doctrine of frustration of purpose, referred to generally as ‘frustration,’ or as ‘discharge by supervening frustration’ by the Restatement, is as follows:

Where, after a contract is made, a party’s principal purpose is substantially frustrated without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his remaining duties to render performance are discharged, unless the language or the circumstances indicate the contrary.

In re Est. of Sheppard, 2010 WI App 105, ¶ 12, 328 Wis. 2d 533, 789 N.W.2d 616 (quoting Restatement (Second) of Contracts: Discharge by Supervening Frustration § 265 (Am. L. Inst. 1981)).

D. The circuit court’s ruling is based on its finding that the terms permitted Teets to remain on bond solely for the purpose of attending the July 19 memorial service, and that finding is not clearly erroneous.

The circuit court’s conclusion that the State did not breach the plea agreement is based on its factual finding

about the terms of the agreement. Its factual finding was that the term of the plea agreement was that Teets would be allowed to attend the memorial service on July 19. (R. 136:20.) This Court is “bound not to upset the trial court’s findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence.” *Turner*, 136 Wis. 2d at 343.

As the circuit court stated at the plea hearing, which occurred on the morning the jury trial was set to start, “The discussions between the parties were to permit you to attend that service. And I’m not going to disturb the agreement here.” (R. 146:17–18.) As the circuit court noted at a subsequent hearing, it was in an unusually good position to understand this part of the plea agreement: “To an unusual degree, the [c]ourt was consulted with respect to the terms of the plea agreement on the morning the plea was taken.” (R. 136:15.) The court stated that Teets’s ability to attend his mother’s service “was something that was important to the entry of the plea.” (R. 136:16.)

Teets makes conclusory arguments to the contrary. Without any indications at all from the record, he asserts, “While this funeral may have been a driving force in why Mr. Teets fiercely negotiated for a specific date to remand himself into custody, it was not the bargained for benefit.” (Teets’s Br. 7.) As proof of this, he states that the parties “could have agreed for a temporary release to attend the funeral, but they did not. They agreed to a specific period of time in which Mr. Teets would remain free subject to bond conditions.” (Teets’s Br. 7–8.) The choice of one alternative over the other, however, does not change the purpose of Teets’s continued release. Teets’s argument now is that the agreement should be treated as one solely focused on the July 20 surrender date, but that ignores the simple fact, clear from the record, that no such agreement would ever have been made absent the memorial service.

Teets has not shown that the circuit court's finding is contrary to the great weight and clear preponderance of the evidence. The record provides ample evidence that the issue of Teets's ability to attend the July 19 memorial service was a sticking point in the plea negotiations. It shows that the State refused to agree to Teets's wish to be out on bond until the September 23 sentencing hearing. It shows that the parties sought to ensure that the circuit court understood the significance of the July 20 report date and why they were making the unusual request to allow Teets not to be remanded to custody after his conviction. The circuit court's factual finding about the terms of the agreement is thus well supported by the record.

The circuit court properly applied the law to the factual finding. It properly referenced principles of contract law. *Deilke*, 274 Wis. 2d 595, ¶ 12. The applicable principle is that of frustration of purpose. The principle is that if "a party's principal purpose is substantially frustrated without his fault" by something that happens "the nonoccurrence of which was a basic assumption on which the contract was made," there is no basis for enforcing the agreement "unless the language or the circumstances indicate the contrary." Restatement (Second) of Contracts: Discharge by Supervening Frustration § 265 (Am. L. Inst. 1981). The cancellation of the memorial service is the event whose "nonoccurrence" "was a basic assumption on which the contract was made." *Id.* The cancellation was not the State's fault. The language of the agreement does not indicate anything to the contrary. The circuit court correctly concluded that because the primary purpose of the agreement for Teets to remain on bond until July 20 was frustrated by the cancellation of the memorial service, that part of the plea agreement was no longer enforceable.

E. If this Court concludes that the State breached the agreement when it moved to revoke Teets's bond, it should still affirm the circuit court's ruling because the breach was not material or substantial.

If this Court rejects the circuit court's finding as clearly erroneous and concludes that the purpose of the bond provision was for Teets to remain out of custody until July 20, 2021, whether there a memorial service occurred or not, it should nevertheless affirm because Teets has not met his burden to show that the breach was material and substantial. *Deilke*, 274 Wis. 2d 595, ¶ 13.

To establish a material and substantial breach of his plea agreement, Teets must show a violation of the agreement's terms that defeated the benefit for which he bargained. *See Williams*, 249 Wis. 2d 492, ¶ 38. Here, even ignoring that Teets's argument rests on a factual finding that the circuit court did not make, i.e., that the primary purpose of the plea term was for Teets to remain on bond until July 20 under any circumstances, Teets fails to show that any alleged plea agreement breach was material and substantial.

Even if this Court somehow finds that the bond provision in the parties' plea agreement bound the State to Teets's July 20 report date even if there was no service, it should affirm because the State's successful motion to revoke bond on July 13 still gave Teets 20 of the 27 days he bargained for. The majority of the cases on material and substantial breach of plea agreements concern sentencing arguments and therefore the factual applications from those cases are of limited value here. But the question of whether the breach "defeat[ed] the benefit for which [Teets] bargained" does apply. *See Williams*, 249 Wis. 2d 492, ¶ 38. The benefit for which Teets bargained, even by his own argument, was to remain out of custody for 27 days after his conviction, and he

got 20 days. The difference between three and four weeks on bond is not “substantial.”

As Teets acknowledges in his brief, the State made multiple concessions in exchange for his plea in addition to the four weeks of post-plea: to dismiss eight charges in four separate cases, not to file charges in four referred cases, and to cap its sentencing recommendation. (R. 114:6; 146:3, 5.) The State’s motion to revoke Teets’s bond after the memorial service was cancelled meant that instead of his having 27 days out of custody after his convictions, he had 20. As the record makes clear, all parties understood that this was not typical for a person who has been convicted of serious felonies. If a breach occurred here, it was not a substantial breach and therefore does not warrant plea withdrawal.

Teets argues that the breach is substantial because “he was denied a significant portion of one of the benefits he bargained for” (Teets’s Br. 8) and that the “loss of [seven days of] freedom represents a very real loss of consideration, not a merely technical violation.” (Teets’s Br. 9). The truth is that Teets was granted 20 days of post-conviction freedom that he would not have otherwise received at all. The loss of seven days more that he had been granted under extraordinary circumstances is, if anything, a technical violation. Under these circumstances, this loss is not substantial. It does not warrant plea withdrawal.

CONCLUSION

This Court should affirm the order denying Teets's motion to vacate his plea.

Dated this 27th day of September 2022.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,847 words.

Dated this 27th day of September 2022.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 27th day of September 2022.

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