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SUPREME COURT

**State of Wisconsin
Supreme Court
Appeal No. 2023AP283-CR**

State of Wisconsin,

Plaintiff-Respondent-Respondent,

v.

Terron Anthony Clayborn,

Defendant-Appellant-Petitioner.

**Petition for Review of an Opinion of the Wisconsin Court of
Appeals, District I**

Petitioner's Petition

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Petition

Now comes the above-named petitioner, by his attorney, Thomas J. Erickson, and pursuant to § 809.62, Stats, hereby petitions the Wisconsin Supreme Court to review this appeal.

As grounds, the undersigned alleges and shows to the court that the issue presented by this appeal is a substantial question of state and federal constitutional law, and it is not controlled by well-settled law. An opinion by the Supreme Court will clarify and harmonize the law.

Statement of the Issue

Clayborn retained Attorney Jason Baltz to represent him in regard to the charge of Hit and Run Resulting in Death and Operating a Motor Vehicle While Suspended Causing Death. Both before and after Attorney Baltz was hired, he told Clayborn that he had a close personal relationship with the judge presiding over his case and that he would eventually be able to ask the court for a favor in terms of a more lenient sentence.

The issue is whether the guilty pleas should be withdrawn because of the inducements of Attorney Baltz which render the pleas to be involuntary; i.e., did factors extrinsic to the plea colloquy create a manifest injustice.

The issue was presented to the court of appeals as follows: Should Terron Clayborn's guilty pleas be withdrawn because factors extrinsic to the colloquy, i.e. the inducements of his attorney, render his pleas involuntary.

Answered by the circuit court: No.

Answered by the court of appeals: The court of appeals concluded that Clayborn failed to show manifest injustice if he were not permitted to withdraw his guilty pleas because the plea colloquy was thorough and addressed the points relevant to inducement.

Statement of the Case

I. Procedural History

By criminal complaint filed on February 14, 2019, Terron Clayborn was charged with Hit and Run Resulting in Death in violation of Secs. 346.67(1), 346.74(5)(d), and 939.50(d), Wis. Stats. and Knowingly Operate Motor Vehicle While Suspended Causing Death in violation of Secs. 343.44(1)(a) and 939.50(3)(h), Wis. Stats. The complaint alleges that Mr. Clayborn, who was driving a vehicle while his operating privileges were suspended, struck and killed BR, who was working shoveling asphalt for the City of Milwaukee Public Works. The complaint further alleges that the Defendant fled the scene of the accident. (2)

On May 1, 2019, Mr. Clayborn pleaded guilty to both the Hit and Run Resulting in Death count and Knowingly Operate a Motor Vehicle While Suspended Resulting in Death count. (33:1-8)

On June 13, 2019, the court sentenced the Defendant to twenty-three years imprisonment comprised of twelve years initial confinement and eleven years extended supervision in regard to Count One and six years imprisonment comprised of three years initial confinement and three years extended supervision on Count Two to run concurrently to Count One. (30:31-41)

On September 12, 2019, an Amended Judgment of Conviction was entered amending the term of extended supervision in regard to Count One to ten years because the original eleven-year sentence exceeded the statutory maximum extended supervision term. According to the Amended Judgment of Conviction, Mr. Clayborn is not eligible for either the Challenge Incarceration Program or the Substance Abuse Program. (25)

On April 28, 2020, Mr. Clayborn filed a Motion for Post-Conviction Relief which argued that his sentence should be vacated because the court did not exercise its discretion regarding whether the Defendant should be eligible for either the Substance Abuse Program (aka “The Earned Release Program or “ERP”) or the Challenge Incarceration Program (“CIP”). (42) On May 1, 2020, the court issued its Decision and Order Denying Motion for Post-Conviction Relief. (43)

A No Merit Report was filed; however, upon further consideration, the Report was voluntarily dismissed and remanded to the trial court. (59)

A post-conviction motion was filed on April 21, 2022, which argued that the guilty plea should be vacated because Mr. Clayborn’s attorney made representations to him regarding his personal relationship with the judge which improperly induced the guilty pleas. (61) On August 3, 2022, the State filed a response to the postconviction motion. (78) On August 29, 2022, a reply was filed by the defense to the State’s response. (82)

On November 17, 2022, a motion hearing was conducted. (91) On January 17, 2023, the court denied the post-conviction motion in an oral ruling (101) and entered a written order denying the motion on February 1, 2023. (93)

A notice of appeal was filed on February 15, 2023. (94).

Mr. Clayborn appealed the denial of his postconviction motion.

The court of appeals affirmed the circuit court's order denying Mr. Clayborn's motion to withdraw his pleas. In so doing, the court reasoned, "The record reflects that Clayborn's plea colloquy was thorough and addressed the points relevant to inducement. 'A failure to recognize the implications of a valid plea colloquy would debase the judicial proceeding at which a defendant pleads and the court accepts the plea.' We determine no reason to grant Clayborn relief on this basis." [Ct. App. Opinion p. 13]

B. Evidence presented at the motion hearing

Testimony of Attorney Jason Baltz

Attorney Jason Baltz was retained to represent Mr. Clayborn by Mr. Clayborn's girlfriend Santaira Robinson. During their conversations regarding whether to hire him, Attorney Baltz testified that he was aware that Judge Jeffery Wagner had been assigned to the case. Attorney Baltz stated that he clerked for Judge Wagner when he was in law school; that the judge had

been helpful in his career; that he viewed him as a “mentor and a friend”; that he knows the judge’s son and his whole family; that he knows him socially and that the judge had attended his wedding; and that the judge had written a letter of recommendation for his brother in medical school. (91:7-9)

Attorney Baltz was aware that Mr. Clayborn wanted to file a substitution on Judge Wagner but that he advised against proceeding with a substitution request. When he informed Mr. Clayborn that the State would recommend twelve years of initial confinement if he pleaded guilty, Mr. Clayborn was not “happy”. Ultimately, he asked the court for a six-year initial confinement sentence which was rejected by the court in favor of the twelve years recommended by the State. (91:10-11)

After sentencing, Attorney Baltz met with Ms. Robinson in person. She asked him what happened to “the favor” that he said he was going to ask of Judge Wagner in order to get a lesser sentence. Attorney Baltz told Ms. Robinson he could not ask for a favor. He reiterated this close relationship with the court and that he had seen him socially very recently and that he “thought we were teed up” for sentencing. (91:12-15)

Testimony of Santaira Robinson

Santaira Robinson testified that she has been Mr. Clayborn’s companion for fifteen years and that he is the father of her children. She was tasked with hiring an attorney for Mr.

Clayborn who was in custody. During her second meeting with Attorney Baltz, he described his “great” relationship with Judge Wagner and stated that he had clerked for him in the past, that they were friends, that the Judge had attended his wedding, and that he had written a letter of recommendation. Attorney Baltz further told her his relationship with the court would be beneficial and that he would be able to ask the court for a “favor” on Mr. Clayborn’s behalf as part of the sentencing process. (91:24-27)

Ms. Robinson further testified that prior to the preliminary hearing, she told Attorney Baltz that Mr. Clayborn wanted to file a substitution on Judge Wagner. Attorney Baltz told her that if they substituted and were assigned a new judge, he would not be able to ask the court for a favor. (91:28-29) Later, upon learning that the State was going to recommend twelve years in prison if Mr. Clayborn pleaded guilty, she expressed her displeasure and the displeasure of Mr. Clayborn to Attorney Baltz who again spoke of his relationship with the court and his ability to ask for a favor. (91:28-30)

When she met with Attorney Baltz after sentencing, she asked him what happened to the favor he was going to ask the court for because Mr. Clayborn was sentenced to twelve years of initial confinement. For the first time, Attorney Baltz said he could not ask for a favor but expressed surprise at the sentence because he thought that they were “teed up” and that the Judge always does him right. (91:31)

On cross-examination, Ms. Robinson stated that Attorney Baltz’s relationship with Judge Wagner was a major factor in the

decision to retain him. (91:42) The favor in terms of the length of the prison sentence that Attorney Baltz told her he was going to ask for was six to eight years imprisonment (as initial confinement). (91:34-36)

Testimony of Terron Clayborn

Mr. Clayborn testified that at their first meeting prior to the preliminary hearing, he asked Attorney Baltz to file a substitution of judge because of Judge Wagner's reputation as a tough sentencer. Attorney Baltz told him that Judge Wagner was his friend and that their families socialized together. Because of their friendship, Attorney Baltz advised not to substitute because he would be able to ask the court "for a favor." (91:50-52)

Eventually, Attorney Baltz informed Mr. Clayborn that the State would recommend twelve years of initial confinement if he entered into a plea agreement. Mr. Clayborn told Attorney Baltz that was too much time and that he wanted to proceed to trial. Attorney Baltz reiterated that he would ask his friend for a favor and that he could guarantee "six to seven, no more than 8 years" in prison, which is why Mr. Clayborn decided to plead guilty. (91:53-54)

Mr. Clayborn signed the plea questionnaire which contained the statement that no other promises had been made other than those contained in the plea. He did not want to sign the questionnaire but did because of what he considered to be Attorney Baltz's guarantee in regard to the sentence. (91:54-55)

Also, he recalled that during the plea colloquy, the judge asked him if there were any other promises made aside from the plea negotiation and Mr. Clayborn answered that there were not because Attorney Baltz told him to answer in that manner. (91:56).

Mr. Clayborn testified that he would not have pleaded guilty but for Attorney Baltz's statements regarding his relationship with Judge Wagner. (91:57).

DISCUSSION

The Wisconsin Supreme Court should review this appeal for the purpose of clarifying the law applicable to claims of inducements by attorneys in regard to factors extrinsic to plea colloquies which render a plea involuntary.

On appeal, to determine whether the trial court abused its discretion in denying a defendant's motion to withdraw his guilty plea after sentencing we must consider whether withdrawal was necessary to correct a "manifest injustice." Further, to decide that, the court must determine "whether the plea of guilty was voluntarily, advisedly, intentionally and understandingly entered or whether it was, at the time of its entry, attributable to force, fraud, fear, ignorance, inadvertence or mistake." **State v. Booth**, 142 Wis.2d 232, 238, 418 N.W.2d 20, 22 (Ct.App. 1987); see also **State v. Reppin**, 35 Wis.2d 377, 384, 151 N.W.2d 9, 13 (1967).

Both the trial court and the court of appeals ruled that Mr. Clayborn should not be rewarded with plea withdrawal because he participated in a plan to perpetrate a fraud. Moreover, the plea colloquy was valid and that the defendant was questioned about inducements and made aware of points relevant to inducement.

Mr. Clayborn has identified a manifest injustice because he would not have pled guilty without the repeated representations of Attorney Baltz that his relationship with Judge Wagner would benefit him at sentencing. Attorney Baltz's representations to Mr.

Clayborn are established and uncontroverted. In fact, the trial court, in finding that Attorney Baltz “overpromised”, stated that it “can’t emphasize more how improper that was...He (Baltz) repeatedly led the defendant and Ms. Robinson to believe that if they only got him on the case, because of his relationship with Judge Wagner, that he was going to obtain a better sentence than he otherwise should expect.” (101:10-11) (Appendix 2).

While Mr. Clayborn was not truthful during the plea colloquy regarding whether promises were made other than the plea agreement, his statements (as the trial court acknowledged (101:12) (Appendix 2)) were made based on the inappropriate conduct of Attorney Baltz.

The court of appeals recognizes that there is no Wisconsin law directly on point for this case. It relies, in part, on the “illustrative” case of **Hutchings v. United States**, 618 F.3d 693, 695, 699 (7th Cir. 2010) which states that the court must be able to rely on a defendant’s testimony during the plea colloquy in regard to promises and assurances inducing the plea. Another illustrative case, however, is **State v. Dawson**, 2004 WI App 173, 276 Wis. 2d 418, 688 N.W.2d 12. In **Dawson**, the court concluded that “a plea agreement that leads a defendant to believe that a material advantage or right has been preserved when, in fact, it cannot be legally obtained produces a plea that is ‘as a matter of law...neither knowing or voluntary.’” ¶11 (quoting **State v. Riekkoff**, 112 Wis. 2d 119, 332 N.W.2d 744 (1983)).

Here, it is uncontroverted that Attorney Baltz convinced Mr.

Clayborn (and Ms. Robinson who was tasked with finding Mr. Clayborn an attorney) that he possessed a material advantage because of his close relationship with Judge Wagner. The bottom line is that Mr. Clayborn would not have pleaded guilty ***but for*** his attorney's assurances that Judge Wagner would deliver a favor at sentencing. **Dawson** presents an avenue for the Court to expand and clarify the law.

Absent the court granting this petition, Mr. Clayborn's pleas will stand—pleas, as the trial court and the appellate court both concede--that were the result of Attorney Baltz's inducements which were extrinsic to the plea colloquy, and which call for plea withdrawal.

Conclusion

For these reasons, it is respectfully requested that the Wisconsin Supreme Court grant review of this appeal

Dated at Milwaukee, Wisconsin, this 9th day of September, 2024.

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STATE OF WISCONSIN

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-VS-

TERRON ANTHONY CLAYBORN,

Defendant-Appellant-Petitioner.

APPENDIX OF DEFENDANT-APPELLANT-PETITIONER

Decision of Court of Appeals

App. 1

Transcript of Oral Decision of Trial Court App. 2

Certification as to Length and E-Filing

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm), and (c) for a brief. The length of this brief is 2,606 words.

Dated at Milwaukee, Wisconsin, this 9th day of September, 2024.

Respectfully submitted,

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