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CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN

IN SUPREME COURT

No. 2023AP0283-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TERRON ANTHONY CLAYBORN,

Defendant-Appellant-Petitioner.

RESPONSE OPPOSING PETITION FOR REVIEW

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ARGUMENT

Terron Anthony Clayborn hit a City of Milwaukee Department of Public Works worker with his car, killing him, and then fled on foot. (R. 1:2–3.) Clayborn had never been issued a driver's license, and he had fourteen convictions for operating while suspended. (R. 1:3–4.) He pled guilty to hit and run resulting in death and knowingly operating a motor vehicle while suspended resulting in death. (R. 33.) The circuit court, the Honorable Jeffrey A. Wagner, presiding, sentenced Clayborn to 12 years of initial confinement and 11 years of extended supervision. (R. 30:41.)

Clayborn moved to withdraw his guilty pleas on the ground that his trial counsel, Attorney Jason Baltz, induced him to plead guilty by telling him that he had a personal relationship with the trial judge, and promising him that he would get a sentence of five to six years, or at most eight years, if he pled guilty. (R. 61.) After an evidentiary hearing, the circuit court found that Clayborn's trial counsel acted inappropriately by telling Clayborn about his relationship with Judge Wagner and by leading him to believe that he could get Clayborn a shorter sentence than another lawyer could because of that relationship. (R. 101:6–7.) But the court found that Clayborn had a responsibility to tell the trial court the truth during the plea colloquy, and that he was not credible when he said he only lied to the court because Attorney Baltz told him to do so. (R. 101:8, 10.) The court found "a certain irony in this entire proceeding that one is going to assert a manifest injustice based upon the fact that there are attempts to secure some kind of unethical and inappropriate bargain [that] did not come to fruition," (R. 101:8), and it said it would not reward Clayborn for "engag[ing] in a plan to basically perpetuate a fraud and get a deal that you are otherwise not entitled to." (R. 101:10.) The court concluded that Clayborn failed to show a manifest

injustice, so it denied his motion for postconviction relief. (R. 101:13.)

The court of appeals affirmed. *State v. Terron Anthony Clayborn*, 2023AP283-CR, 2024 WL 3873477 (Ct. App. August 20, 2024) (unpublished). It concluded that the trial court conducted a sufficient plea colloquy, and that Clayborn said no promises were made to induce him to plead guilty. *Id.* ¶ 26. The court of appeals further concluded that Clayborn got the benefit of his plea bargain with the State, and that he failed to show that not allowing plea withdrawal would be manifestly unjust. *Id.*

Clayborn now petitions this Court for review of the court of appeals' decision. The State opposes Clayborn's petition for the following reasons.

1. Clayborn seeks review of one issue: "whether the guilty pleas should be withdrawn because of the inducements of [trial counsel] which render the pleas to be involuntary; i.e., did factors extrinsic to the plea colloquy create a manifest injustice." (Pet. 3.) Clayborn argues that he only pled guilty because of "his attorney's assurances that Judge Wagner would deliver a favor at sentencing." (Pet. 14.)

However, Clayborn completed and signed a plea questionnaire on which he said no promises had been made to him (R. 10:1–3), and he told the trial court he was not promised anything to plead guilty (R. 33:5). The circuit court found as fact that Clayborn's testimony that he only lied to the court because his attorney told him to do so was not credible. (R. 101:8.) Review would be for error correction, and Clayborn has not shown that the circuit court's finding of fact was erroneous.

2. Clayborn asserts that it would be manifestly unjust not to allow him to withdraw his plea. (Pet. 12.) But he acknowledges that "[b]oth 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.” (Pet. 12.) Clayborn does not dispute that he attempted to perpetuate a fraud, and that he lied to the trial court. Nor does he explain why a person who did so is entitled to plea withdrawal.

3. Clayborn relies on *State v. Dawson*, 2004 WI App 173, 276 Wis. 2d 418, 688 N.W.2d 12, which concluded that a plea agreement that leads a defendant to believe he has a right or advantage he cannot legally have renders a plea involuntary. (Pet. 13.) He asks this Court to grant review “to expand and clarify on” *Dawson*. (Pet. 14.) But here, the plea agreement did not lead Clayborn to believe he had a right or advantage other than what he had bargained for. And as the court of appeals concluded, Clayborn received the benefit of his bargain with State. *Clayborn*, 2024 WL 3873477, ¶ 13. Clayborn does not explain why this Court should hold that where a defendant receives the benefit of his bargain but is unsuccessful in perpetuating a fraud on the trial court that is not part of the plea agreement, a manifest injustice entitles him to withdraw his plea.

CONCLUSION

This Court should deny review.

Dated this 1st day of October 2024.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certify that this petition or response conforms to the rules contained in Wis. Stat. §§ (Rules) 809.19(8)(b), (bm) and 809.62(4) for a petition or response produced with a proportional serif font. The length of this petition or response is 850 words.

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 Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 1st day of October 2024.

Electronically signed by:

Michael C. Sanders
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