

FILED
01-15-2026
CLERK OF WISCONSIN
SUPREME COURT

STATE OF WISCONSIN
IN SUPREME COURT

No. 2024AP1424-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHARLES WILLIAMS,

Defendant-Appellant-Petitioner.

RESPONSE TO PETITION FOR REVIEW

JOSHUA L. KAUL
Attorney General of Wisconsin

LISA E.F. KUMFER
Assistant Attorney General
State Bar #1099788

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2796
(608) 294-2907 (Fax)
lisa.kumfer@wisdoj.gov

ARGUMENT

There is nothing about this case that warrants this Court's review. This Court has confirmed that the constitutional and statutory rights to be physically in the same room with the judge during stages of a criminal proceeding can be waived, either expressly or by conduct, and that violations of the right to be present are subject to harmless error analysis. *State v. Washington*, 2018 WI 3, ¶¶ 26–28, 379 Wis. 2d 58, 905 N.W.2d 380; *State v. Peterson*, 220 Wis. 2d 474, 489, 584 N.W.2d 144 (Ct. App. 1998). The court of appeals here appropriately assumed without deciding that Williams's waiver of in person appearance via paper form was invalid, but found that any error in Williams participating in his plea hearing over Zoom was harmless, given the circumstances of the case. There is nothing here to clarify and Williams never explains any substantial injury or manifest injustice caused by his participation over Zoom.

Williams has misframed this case in his Petition. The court of appeals did not find that Williams's waiver of the right to be present was invalid. (Pet. 14.) It assumed without deciding that it was, and concluded any error was harmless. Williams also fails to give any valid reason why harmless error should not apply to waivers of the right to be present, particularly when the case was resolved over videoconference where the court, the parties, and the defendant could all see and hear each other, and Williams has not identified any error in the plea proceedings. (Pet. 14–22.) Applying harmless error in this circumstance plainly does not “create[] a right without a remedy.” (Pet. 16–19.) It prevents needless repetition of proceedings when there is no error in the proceedings that requires a remedy. The Supreme Court has “repeatedly reaffirmed the principle that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on the whole record, that the constitutional error was harmless beyond a reasonable doubt.” *Delaware v.*

Van Arsdall, 475 U.S. 673, 681 (1986). “Reversal for error, regardless of its effect on the judgment, encourages litigants to abuse the judicial process and bestirs the public to ridicule it.” *Id.* (citation omitted).

As to the statutory right to be present under Wis. Stat. § 971.04, the Legislature has made clear that criminal proceedings “shall” not “be affected by reason of any defect or imperfection in matters of form which do not prejudice the defendant.” Wis. Stat. § 971.26. It also has commanded that “[t]he court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.” Wis. Stat. § 805.18(1). This section applies to criminal actions via Wis. Stat. § 972.11(1). Williams presents no compelling reason why these statutes should not apply to Wis. Stat. § 971.04.

The State additionally cannot understand how Williams reached the conclusion that the court of appeals violated the party presentation rule here. (Pet. 22–27.) Contrary to what Williams suggests, the court of appeals had input from both parties on harmless error—the State fully briefed it, and Williams addressed it in reply. (Respondent’s Br. 17–19); (Reply Br. 6–11). While the State agrees that the party presentation principle is an important one that the court of appeals should be obligated to respect, that issue would not be before this Court in this case because the parties fully briefed harmless error.

That any violation of Williams’s statutory or constitutional right to be physically in the courtroom was harmless was an irrefutable finding on the facts of this case. Williams’s case commenced during the thick of the COVID-19 pandemic, which had caused courts to grind to a standstill until Zoom proceedings allowed cases to move forward. (R. 185:3–5.) Williams filed a CR-295 form waiving his right to personal appearance so he did not have to be transported back and forth from the jail all the time. (R. 127:3–4.) The

court expressly stated, “[i]f he chooses not to, that’s his right. Okay?” (R. 127:4.) The two filled out the form the next day, and counsel filed the form with the box checked indicating that Williams was voluntarily waiving his “right to be physically present at all future proceedings.” (R. 51.) At the preliminary hearing at which Williams appeared in person, the court again addressed Williams and trial counsel and before scheduling the arraignment, asked if Williams was “okay doing that by Zoom?” (R. 126:2, 5.) Counsel said he was, and the court reminded him to file the CR-295 form if he hadn’t already. (R. 126:5.)

Thus began a long series of obvious attempts by Williams to delay resolution of this case, at nearly all of which Williams either appeared in the courtroom or counsel or the court referenced Williams’s waiver of his right to appear in person, and each time that was the case, Williams appeared by videoconference. (R. 133:2–5; 142:2; 143:2–3; 145:2–5; 139:2–4; 103:2.) Williams would repeatedly tell counsel he wanted to accept the plea and then enter a not guilty plea or request a trial when the court would hold a colloquy with him. This continued even when the court ordered an in-person hearing with Williams in the courtroom, after which counsel ordered a second competency evaluation for Williams because he again switched positions at the hearing. (R. 144:2–4.) Once found competent, Williams requested a jury trial, but again changed his mind and said he wanted to accept the plea. (R. 103:2.) Counsel indicated that he had been substantially exposed to COVID-19 and therefore was quarantining, and that Williams had waived his right to personally appear; therefore, the plea hearing was by Zoom. (R. 103:2–3.)

The court then asked if Williams could hear him and how he wished to plead. (R. 103:3.) Williams said, “no contest.” (R. 103:3–4.) The court then continued through with the standard plea colloquy and accepted the plea. (R. 103:4–

8.) The court asked whether Williams wanted to appear in person for sentencing, and Williams said yes. (R. 103:8.)

Williams failed to establish that refusing to allow him to withdraw his plea amounts to a manifest injustice because he has failed to articulate any way his rights were affected at all by proceeding by video conference.

Williams met with his attorney many, many times before the plea was finally entered, and counsel said he discussed the charges, the elements of the offense, and the maximum penalties each time they met. (R. 191:15.) They discussed Williams pleading at least six times and filled out the plea questionnaire together before the plea. (R. 139:2–3; 191:11–15.) Counsel went over the plea questionnaire with Williams again a few days before the plea hearing. (R. 103:2.) On the questionnaire, Williams indicated that he was 30 years old (though he had turned 31 by the time the plea was entered), completed 12 years of schooling, graduated high school, and understood the English language. (R. 57:1; 103:5.) He indicated that he understood the charge to which he was pleading and the elements the State would have to prove, which were attached to the questionnaire. (R. 57:1, 4–5.) He indicated that he understood that the maximum penalty he faced was 40 years imprisonment, a \$100,000 fine, and potential Chapter 980 commitment. (R. 57:1.) Each box next to the constitutional trial rights Williams was giving up was checked. (R. 57:1.)

In addition, during the plea colloquy, Williams indicated that he was pleading no contest to the charges. (R. 103:3–4.) The circuit court explained to him that “[n]o contest simply means you’re not fighting it” and that if the court accepted his plea it would find him guilty of the crime, and Williams said he understood. (R. 103:4.) Williams confirmed that he was “able to completely discuss it” with his attorney and that his attorney was able to answer any questions he had. (R. 103:5.) The court noted that he had

mental health issues and was on medication for it, and asked if it was interfering with his ability to understand the proceedings or cooperate with his attorney. (R. 103:5–6.) Williams said it was not and assured the court he was competent to enter the plea. (R. 103:5–6.) The court explained that if it accepted his guilty plea he would be giving up the right to trial, to remain silent, to testify, to present evidence, to have witnesses come to court, to tell his side of the story, to a jury, to confrontation, and his right to have the State prove the crime beyond a reasonable doubt. (R. 103:6.) Williams said he understood, was waiving those rights and wanted to plead no contest. (R. 103:6.) Williams said he had no questions about the crime to which he was pleading or what was taking place at the plea hearing. (R. 103:6.) The court asked counsel if it could use the facts in the complaint as a factual basis, and counsel said yes. (R. 103:7.) Given those answers, it found that Williams was freely, voluntarily, and intelligently entering his plea and accepted it. (R. 103:7.)

Williams does not explain what was inadequate about his plea or that he did not understand some portion that was required for him to enter it knowingly, intelligently, or voluntarily. (Pet. 14–27.) Indeed, nowhere does he allege that had he been present, he would not have entered his plea or why. (Pet. 14–27.) Those are required showings to prove manifest injustice. *State v. Bangert*, 131 Wis. 2d 246, 266–67, 389 N.W.2d 12 (1986). And on this record, there is not a reasonable probability that had Williams been physically present in the courtroom he would not have pleaded no contest. While Williams vacillated on whether he wanted to plead or go to trial, “to obtain relief on this type of claim, a [defendant] must convince the court that a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). A decision to reject the plea would not have been rational under these circumstances. The assaults were caught on video

surveillance, and given the victim's age, consent was not an available defense. (R. 2.) The plea halved the amount of prison exposure Williams faced by the State's agreement to dismiss and read in the second count of second-degree sexual assault of a child. (R. 103:3–4.) Williams faced certain conviction at trial if this case proceeded. No rational person would have risked an 80-year sentence at trial on these facts. Any error in failing to affirm that Williams was waiving his right to be present was harmless.

CONCLUSION

Williams's Petition for Review should be denied.

Dated this 15th day of January 2026.

Respectfully submitted,

JOSHUA L. KAUL
Attorney General of Wisconsin

Electronically signed by:

Lisa E.F. Kumfer
LISA E.F. KUMFER
Assistant Attorney General
State Bar #1099788

Attorneys for Plaintiff-Respondent

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-2796
(608) 294-2907 (Fax)
lisa.kumfer@wisdoj.gov

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 1799 words.

Dated this 15th day of January 2026.

Electronically signed by:

Lisa E.F. Kumfer
LISA E.F. KUMFER
Assistant Attorney General

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 15th day of January 2026.

Electronically signed by:

Lisa E.F. Kumfer
LISA E.F. KUMFER
Assistant Attorney General