

**FILED**  
**12-06-2024**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
D I S T R I C T I I I

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Case No. 2024AP1424-CR

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STATE OF WISCONSIN,  
Plaintiff-Respondent,

v.

CHARLES WILLIAMS,  
Defendant-Appellant.

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APPEAL FROM A JUDGMENT OF  
CONVICTION AND ORDER DENYING  
POSTCONVICTION RELIEF ENTERED IN THE  
BROWN COUNTY CIRCUIT COURT, THE HONORABLE  
DONALD R. ZUIDMULDER, PRESIDING

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**BRIEF OF THE PLAINTIFF-RESPONDENT**

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## ISSUE PRESENTED

Did the circuit court erroneously deny Charles Williams's motion to withdraw his plea that was based on his contention that he did not adequately waive his right to be physically present during the plea proceeding?

The circuit court inquired whether Williams wished to be physically present and he said no.

This Court should affirm the circuit court.

## STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case deals with application of settled law to the facts, which is adequately addressed on briefs.

## STATEMENT OF THE FACTS

In July of 2020, the State charged Williams with two counts of second-degree sexual assault of a child after staff at the Willow Creek Behavior Health facility alerted police that Williams forced the victim, 14-year-old CD, to perform two sex acts on him while they were both being admitted to the facility. (R. 2:1–2.) The assaults were caught on video surveillance, and CD provided a written statement about them. (R. 2:2–3.)

Williams was diagnosed with several mental illnesses and deemed incompetent to proceed but likely to regain competency within the statutory period with treatment. (R. 20:8–9.) He was transferred to Mendota Mental Health Institution for inpatient remediation. (R. 42:3.) He was restored to competency about five months later, and proceedings recommenced after several doctors found that he appeared to be malingering about having ongoing symptoms. (R. 42:5–7; 140:24.) Williams, while in person in court, waived his right to a preliminary hearing and waived his right to be

physically present at arraignment, agreeing through counsel to participate via Zoom. (R. 126:2, 5.) The court asked counsel to file the appropriate form (CR-295) indicating that Williams was waiving his right to be present. (R. 126:5; 51.) Williams filed the form and checked the box indicating that he was waiving his “right to be physically present at all future proceedings.” (R. 51.) The form indicated that Williams was making his decision to waive his physical presence at all future proceedings knowingly and voluntarily and that he understood the document. (R. 51.) It also indicated that counsel discussed the form with Williams and believed he understood it and was making the waiver freely. (R. 51.)

Williams appeared by Zoom at the arraignment. (R. 146:2.) Counsel indicated that he and Williams had received the information, reviewed the charges, the elements, the potential penalties, and Williams’s right to substitution, and were waiving reading of the information. (R. 146:2.) Counsel indicated that they were seeking evaluation for a potential Not Guilty by Reason of Mental Disease or Defect (NGI) plea, and the court said it would enter that plea, put a jury trial date on the calendar, and schedule a status hearing where the defense could indicate whether they planned to maintain that plea. (R. 146:2–4.) Williams indicated he understood and was okay with the proposed plan. (R. 146:4.) Counsel noted that he may have to appear in person for the status conference but inquired if Williams could still appear by Zoom, and the court said that was fine. (R. 146:4–5.) The court set the status conference for January 10, 2022, with a final pretrial conference date of February 24, 2022, and a trial date of March 9, 2022. (R. 146:4–5.)

At the January 10, 2022 status hearing, defense counsel noted that Williams’s waiver of his right to be present was on file and that Williams was appearing by Zoom. (R. 133:2.) He informed the court that he would not be pursuing an NGI plea. (R. 133:3.) Instead, counsel filed a completed plea

questionnaire with the court indicating that Williams intended to accept the State's plea offer that he plead no contest to count two, second-degree sexual assault of a child by intercourse, and the State would dismiss and read in count one and cap its recommendation at ten years of initial confinement and ten years of extended supervision. (R. 133:2–3; 57.) The circuit court addressed Williams personally to begin a plea colloquy and asked him if he was still waiving his right to appear in person, and Williams said "Yeah." (R. 133:4.) When asked what his plea to the charge was, however, Williams said he wanted to plead not guilty and wanted to go to trial. (R. 133:4–5.) The court therefore left the final pretrial conference and jury trial on the calendar and concluded the hearing. (R. 133:5.)

On March 4, 2022, however, counsel informed the court that Williams decided to accept the plea. (R. 64.) The court removed the jury trial and set a plea hearing for March 22, 2022. (R. 145:2.) On March 21, 2022, counsel moved to withdraw, noting that Williams had changed his mind on pleading or going to trial three times, and counsel was concerned they were not communicating. (R. 67; 145:2–3.) The court said it would order a personal appearance so they could discuss Williams's wishes in detail, and if he wanted to accept the plea, they could do it immediately afterward. (R. 145:3–4.) This was arranged for March 24, 2022. (R. 145:4–5.)

Accordingly, Williams appeared in person with counsel on March 24, 2022. (R. 144:2.) Counsel indicated that he was "very concerned about some of the dynamics that are going on" and that Williams said he did not know what he was charged with, the elements of the offenses, did not understand the pretrial offer despite counsel going over all of these things with him both through letters and in person multiple times over several months, and that Williams had again changed his mind and wanted a jury trial. (R. 144:2–3.) Counsel said he would ask for another competency hearing if he was

certain his client were telling him the truth, but he was not. (R. 144:3.) The court said it would order another competency evaluation and if the expert found that Williams was malingering or simply intentionally failing to communicate they would determine whether to find new counsel. (R. 144:3–4.)

The doctor found that Williams was competent and that he “does not appear to be experiencing legitimate psychiatric symptoms” and was “displaying a seemingly exaggerated reemergence of psychotic symptoms” that was “highly unlikely” given his ongoing treatment. (R. 79:8–9.) At the competency hearing, however, despite having told his counsel that he agreed with the report and had “no problem with the Court accepting the report and acting on it,” when the court addressed Williams personally, he again changed course and said he believed he was incompetent to proceed. (R. 142:2–3.) Counsel, surprised, told the court “every time I reach an agreement with Mr. Williams, the agreement changes. I spoke with him yesterday. I reviewed the report. I reviewed the basis for the opinion, and at that time we agreed with it.” (R. 142:3.) Counsel added that “at that time he told me he wanted to proceed with a plea today . . . but I don’t know how we can do that.” (R. 142:3.) The court suggested that counsel contact the public defender’s office and see if they would “appoint adversary counsel now on the issue of competency” because counsel did not believe he could ethically take that position. (R. 142:4.) They did so, the Wisconsin Forensic Unit at the Department of Health Services once again found him competent to proceed which Williams contested, and another competency hearing was held. (R. 83; 89; 140:3–4.) The court found him competent, and the matter was again set for further proceedings. (R. 140:24.)

At the newly scheduled August 9, 2022 status conference, Williams appeared in person, and counsel requested that the court ask him personally whether he wanted a jury trial or a plea, as he had changed his mind on counsel six times. (R. 139:2–3.) The court did so, and Williams said he wanted a jury trial and wanted counsel to continue representing him. (R. 139:3.) Trial was scheduled for December 14, 2022. (R. 139:4.) Williams, however, in September yet again changed his mind and informed counsel he wished to plead. (R. 92.) A plea hearing was scheduled for October 13, 2022. (R. 97.)

Williams appeared by Zoom for the plea hearing, and counsel explained that the CR-295 form was on file and that counsel had reviewed it with Williams before filing it. (R. 103:2.) Counsel further explained that he had been exposed to COVID-19 and was following quarantine guidelines necessitating a Zoom hearing. (R. 103:3.) Counsel noted that the plea questionnaire had been filed out on January 3, 2022, and he had reviewed it with Williams twice, most recently on October 4, 2022. (R. 103:2.) Everything on the form remained correct. (R. 103:2.) After the plea colloquy, the court accepted Williams's no contest plea to count 2 of the information and ordered a presentence investigation report. (R. 103:3–8.) The court asked Williams if he wanted to appear in person for sentencing, and Williams said yes. (R. 103:8.) Sentencing was set for December 13, 2022. (R. 103:8.)

Less than a week after the plea hearing, Williams moved to withdraw his plea, contending that he did not know the charge that he pled to, that he did not know he would be waiving his right to a jury trial, and that counsel was ineffective in various ways. (R. 99.) Counsel filed a motion to withdraw simultaneously due to the ineffective assistance claims creating a conflict of interest. (R. 100.) The court scheduled a hearing on the motion for November 11, 2022, but once the hearing commenced, Williams, predictably, changed

his mind again and said he wanted the motion withdrawn and to proceed to sentencing. (R. 138:2–3.) The court imposed 16 years of initial confinement and 6 years of extended supervision. (R. 117:10–11.)

Postconviction, Williams filed another motion to withdraw his plea. (R. 154.) This time, he contended his right to be present was violated and that the court did not advise him of, and he did not know, the maximum penalties for the offenses. (R. 154:1.) The circuit court at a non-evidentiary hearing denied the first claim. (R. 185.) It noted the appropriate form had been filed indicating that Williams was waiving in-person appearances for all of his future proceedings, and reflected “that this is all really the result of the pandemic.” (R. 185:3–4.) The court for 26 years on the bench had not allowed a defendant not to be physically present for proceedings, but when COVID-19 hit, “the whole system collapsed. It closed absolutely down. Then systematically we had to try to address the pandemic and protect the defendant’s rights.” (R. 185:3.) “[T]he supreme court, the judges, to protect defendants created this form, and the form was one in which then if executed and filed on CCAP allowed me as a trial judge to initially go forward which defendants begged me to do that.” (R. 185:3.) “So this is what Mr. Williams had. He filed it.” (R. 185:3–4.) It thus found that “his plea taken that day, taken by my relying on his executing the . . . form” was not defective in any way or in violation of any of Williams’s statutory or constitutional rights in the historical context of being pursued during the ongoing pandemic. (R. 185:4.) It observed that it does not “allow remote proceedings since we’re back in the way [that things] work, and I certainly would be overly cautious today, but contextually in the point in time that this all happened, I’m

well satisfied that his rights were protected.”<sup>1</sup> (R. 185:4.) Williams appeals.

## ARGUMENT

**The circuit court correctly determined that Williams waived his right to be in the courtroom during the plea hearing.**

### A. Standard of Review

Criminal defendants have both a statutory and a constitutional right to be present at certain stages of the criminal proceedings. *State v. Washington*, 2018 WI 3, ¶ 26, 379 Wis. 2d 58, 905 N.W.2d 380; Wis. Stat. § 971.04. These rights can be waived, either expressly or by conduct. *Washington*, 379 Wis. 2d 58, ¶¶ 27–28. Where no waiver has occurred, violations of the right to be present are subject to harmless error analysis. *State v. Peterson*, 220 Wis. 2d 474, 489, 584 N.W.2d 144 (Ct. App. 1998); Wis. Stat. §§ 805.18, 972.11(1).

These are all questions of law reviewed de novo. *Washington*, 379 Wis. 2d 58, ¶ 23.

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<sup>1</sup> The court scheduled a *Bangert* hearing on the claim that Williams was not advised by the court of nor aware of the maximum penalties. (R. 185:4–5.) The circuit court denied that portion of Williams’s motion in a written order on June 4, 2024. (R. 182.) Williams does not challenge that decision on appeal, so the State does not discuss it further.

**B. Williams validly waived his right to be in the courtroom for entry of his plea.**

Postsentencing, a guilty plea must be set aside only if allowing it to stand would work “a manifest injustice.” *State v. Soto*, 2012 WI 93, ¶ 14, 343 Wis. 2d 43, 817 N.W.2d 848. The State does not dispute Williams’s contention “that Wis. Stat. § 971.04(1)(g) provides a criminal defendant the statutory right to be in the same courtroom as the presiding judge when a plea hearing is held, if the court accepts the plea and pronounces judgment.” *Soto*, 343 Wis. 2d 43, ¶ 2. That right can be waived. *Id.* ¶ 40. Contrary to what Williams seems to suggest, however, while a colloquy is preferable, waiver of that right can be knowingly, intelligently, and voluntarily accomplished without necessarily holding an express colloquy on it with the defendant. *Id.* ¶¶ 46–50; (Williams’s Br. 13–24); *see also Washington*, 379 Wis. 2d 58, ¶¶ 57–58. The record shows that Williams validly waived his right to be physically present here.

The court recognized that 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.) On October 13, 2021, the court advised counsel and Williams that since he was found competent to proceed, counsel should discuss with Williams whether to file the CR-295 form 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.) It acknowledged receiving the form at the arraignment on November 29, 2021. (R. 146:2.) Williams appeared by Zoom there, as well, and the court inquired of him if it was acceptable that the court would file an NGI plea on his behalf while his attorney investigated whether that plea could be supported. (R. 146:3–4.) Williams said it was. (R. 146:3–4.) Importantly, when setting the next status conference, counsel recognized that counsel himself could appear in person for that hearing, but requested that Williams be permitted to appear by Zoom. (R. 146:4.) The court permitted him to appear by Zoom. (R. 146:4–5.) The court additionally said that for the final pretrial conference, if the case was resolved, that hearing would be conducted by Zoom, but if it was not, the court wanted in-person appearances “so we can go over what’s going to happen.” (R. 146:5.)

Thus began a long series of obvious attempts by Williams to delay resolution of this case, at nearly all of which Williams either appeared or counsel or the court referenced Williams’s waiver of his right to appear in person. (R. 133:2–5; 142:2; 143:2–3; 145:2–5; 139:2–4; 103:2.) At the January 10, 2022 status conference, counsel again noted that Williams was waiving his right to be present via the CR-295 form and also had filed a filled-out plea questionnaire. (R. 133:2.) The court asked Williams whether he could hear the court, and Williams said yes. (R. 133:3.) The court addressed Williams about waiving his right to be present, asking, “[t]hen, Mr. Williams, you previously indicated that you are waiving your right of personal appearance and are appearing via Zoom. Is that correct?” (R. 133:4.) Williams replied that was correct. (R. 133:4.) The circuit court was then about to have the plea colloquy with Williams, but when it asked Williams what his plea was today, Williams replied, “not guilty” and said he wanted a jury trial. (R. 133:4–5.) The court

accordingly terminated the proceeding. (R. 133:5.) Then shortly before the trial date, Williams changed his mind again and said he wanted to accept the plea, and counsel said he did not know what was going on because Williams kept changing his mind after telling counsel what he wanted. (R. 145:2–3.)

The court then proposed to Williams and trial counsel that it would order a personal appearance, “[w]e’ll all be together in the same room, and then you can either have confidence that he wishes to proceed or I guess we can address it in a way that we’ll all feel comfortable.” (R. 145:3.) The court explained to Williams that it was going to order that he be transported to the courtroom so that he’d be present with his counsel and “we can take care of this.” (R. 145:4.) Williams said that was okay, and the court ordered him transported two days later. (R. 145:4–5.) Once Williams was at that hearing, though, he had changed his mind again and told counsel he didn’t know anything about the case and he wanted a jury trial, prompting counsel to request another competency hearing. (R. 144:2–4.) After he was found competent, he again insisted he wanted a jury trial. (R. 139:2–3.) He then again changed his mind and asked to accept the plea, so the court set a hearing. (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 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.)

In other words, Williams validly waived his right to personally appear in all future proceedings in his case via the CR-295 form that he discussed with counsel and filed. Williams never indicated that he wished to rescind that waiver in any way—in fact, counsel’s statements to the court often suggest that Williams did *not* want to come to court. (R. 146:4.) The record shows that Williams’s waiver of being physically present was noted immediately before the plea hearing began, and Williams confirmed he could see and hear, and he responded appropriately when addressed by the court. (R. 103:2–7.) He said he understood what was going on and did not have any questions. (R. 103:6–7.) And despite Williams having waived his physical presence at future proceedings, the court still inquired of him whether he wanted to be physically in court at sentencing. (R. 103:8.)

*State v. Anderson*, 2017 WI App 17, 374 Wis. 2d 372, 896 N.W.2d 364, is distinguishable from this case. There, the defendant was not aware that his proceedings were going to be conducted by anything other than in-court appearances until the day of the plea hearing. *Id.* ¶¶ 3–14. His case was scheduled for a final pretrial hearing at which he was not going to appear in person, but the parties reached a plea deal via telephone conference that same day and converted the hearing to a plea hearing. *Id.* ¶¶ 4–5. There was no time to arrange for Anderson to be brought to court. *Id.* ¶¶ 4–5. His attorney had no opportunity to meet with him before the plea hearing, and thus they never discussed whether he wanted to be physically present for the proceedings or even to discuss the plea without the prosecutor present, nor did they have the opportunity to fill out the plea questionnaire and discuss it. *Id.* ¶¶ 8–10. The prosecutor and defense counsel were both in the courtroom, and Anderson appeared by telephone, meaning he could not see the court or any of the participants, and they could not see him; therefore, they had no way of knowing whether the audio was functioning and no way to

observe any nonverbal cues from Anderson about the proceeding. *Id.* ¶¶ 5, 39–41. And, importantly, there was not a global pandemic taking place requiring people to attempt to stay distant from each other at the time Anderson’s plea was accepted.

Here, Williams was fully aware that his proceedings were being conducted by videoconferencing, which was initially instituted to prevent Williams’s case from stalling during the COVID-19 pandemic, and he had consented to that procedure nearly a year earlier. (R. 185:2–4.) The court noted that now that courts were functioning normally again it likely would not have allowed the plea hearing to be conducted by videoconference, but in context his rights were protected. (R. 185:4.) The court had instructed counsel to discuss the waiver form with Williams and said on the record that Williams could choose not to waive his right to physical appearance. (R. 128:4.) Williams filled out the form and had participated via videoconferencing numerous times; counsel routinely confirmed whether the next hearing would be conducted via videoconference; and Williams never had an issue communicating with his attorney or the court during the proceedings. (R. 148:3–4; 137:2, 5–7; 125:3, 8–9; 135:5–6; 146:2–5; 145:3–4.) The record shows that Williams’s waiver of being physically present was noted before the plea hearing began. (R. 103:2.) The parties and the court appear to all have appeared via videoconference,<sup>2</sup> unlike in *Anderson* where the prosecutor, the judge, and defense counsel were all in the courtroom and the defendant was appearing from prison by telephone. (R. 103:2–3.) The participants here could all both see and hear each other, so they knew the technology was functioning correctly. (R. 103:2–7.) The attorneys and the court could see if Williams was exhibiting any nonverbal cues

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<sup>2</sup> It is unclear from the record whether the prosecutor was present in the courtroom or not. (R. 103:2–3.)

of confusion or dissatisfaction with the plea or his answers to the colloquy, and he appears to have exhibited none, given that his counsel never raised any issues and the court accepted his answers to the colloquy. (R. 103:2–8.) True, the court did not explicitly ask him if he wished to be physically in court for this proceeding. *See Anderson*, 374 Wis. 2d 372, ¶ 42. But given this record, the court had no reason to believe Williams wanted to revoke his prior waiver, especially because Williams remained silent on the issue during the plea hearing except to invoke his right to be physically present for the later sentencing hearing, powerfully implying that he had no objection to the remote plea hearing.

Given Williams’s waiver of future in person appearances that he discussed with counsel, his failure to ever indicate either to counsel or the court that he was dissatisfied with the waiver, and his long history of both appearing by videoconference and changing his decision about whether to plead or not, the court did not err in relying on the fact that Williams had said he was waiving his right to be physically present in court for all future proceedings and proceeding to conduct the plea colloquy with him once he appeared and indicated that he wanted to enter the plea.<sup>3</sup> The court was entitled to rely on what was routine procedure during the COVID-19 pandemic and counsel’s and Williams’s previous representations that he was waiving his right to be physically present. There was no error in taking the plea in this manner under these circumstances.

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<sup>3</sup> Williams’s statement that “[n]othing in the record suggests Mr. Williams waived his right to personal appearance” does not fairly or reasonably reflect the record. (Williams’s Br. 13.)

**C. Any error in failing to further address Williams about whether he wanted to personally appear in the courtroom rather than by audiovisual means was harmless because none of his substantial rights were affected.**

Williams has 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's Br. 10–23.) In order to establish that any error in conducting Williams's plea hearing while he was appearing by videoconference was harmless, the State must show that Williams's plea was knowing, intelligent, and voluntary consistent with the requirements of Wis. Stat. § 971.08. *Anderson*, 374 Wis. 2d 372, ¶¶ 53–55. The record shows that if the court erred by conducting the plea over videoconferencing, it was harmless beyond a reasonable doubt. *Peterson*, 220 Wis. 2d at 488–89.

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.)

That was a valid finding. The court ensured that Williams was competent, understood the charge, and understood the rights he was giving up by pleading. It determined there was a factual basis for the plea. There is

nothing suggesting that Williams was confused or misinformed about anything related to his plea.

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. (Williams's Br. 11–24.) Indeed, nowhere does he allege that had he been present, he would not have entered his plea or why. (Williams's Br. 11–24.) 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

This Court should affirm the circuit court.

Dated this 6th day of December 2024.

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 4968 words.

Dated this 6th day of December 2024.

Electronically signed by:

Lisa E.F. Kumfer  
LISA E.F. KUMFER  
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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 6th day of December 2024.

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