COURT OF APPEALS
DECISION
DATED AND FILED

November 29, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2012AP128-CR
2012AP129-CR

Cir. Ct. Nos. 2009CF394
2009CF1432

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRAVIS J. GUTTU,

DEFENDANT-APPELLANT.

APPEALS from an order of the circuit court for Brown County: WILLIAM M. ATKINSON, Judge. *Affirmed*.

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 BLANCHARD, J. Travis J. Guttu appeals a circuit court order denying his consolidated motions for postconviction relief from judgments convicting him of second-degree sexual assault, aggravated battery, and other

offenses. Guttu argues that he should be allowed to withdraw his plea to the sexual assault charge because one of his attorneys was ineffective in failing to raise Guttu's alleged lack of knowledge of WIS. STAT. ch. 980 (2009-10)[1] ("Chapter 980") at the time of the plea as a ground for pre-sentencing plea withdrawal. Guttu separately argues that he should be allowed to withdraw his plea to the aggravated battery charge because his plea was not knowing, intelligent, and voluntary, based on the circuit court's alleged failure to ensure that Guttu sufficiently understood the elements of the charge. We reject these arguments and affirm the order.

BACKGROUND

¶2 Guttu entered no contest pleas to several charges, including the second-degree sexual assault and aggravated battery charges. At the time of his pleas, Guttu was represented by Attorney Brett Reetz.

¶3 Before Guttu was sentenced, he moved for plea withdrawal. The circuit court denied Guttu's motion after a hearing. During this phase of proceedings, Guttu was represented by Attorney Brett DeBord.

¶4 After sentencing, Guttu filed a postconviction motion, again seeking plea withdrawal. In this motion, Guttu argued for the first time that he should be allowed to withdraw his plea to the sexual assault charge because he had no knowledge, at the time he entered the plea to that charge, that he might potentially be committed under Chapter 980 ("Sexually Violent Person Commitments"),

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

based in part on the sexual assault conviction. He claimed that, in moving for pre-sentencing plea withdrawal, Attorney DeBord was ineffective in failing to raise Guttu's alleged lack of awareness of Chapter 980 as a basis.[2] In addition, Guttu argued that his plea was not knowing, intelligent, and voluntary because the circuit court failed to ensure that Guttu understood the elements of the sexual assault charge and the aggravated battery charge.[3]

¶5 The circuit court held an evidentiary hearing on Guttu's motion. Attorney Reetz, Attorney DeBord, and Guttu each testified. At the close of the hearing, the court concluded that Attorney DeBord was not ineffective because DeBord was not required to "locate all issues available" and because Guttu failed to show prejudice. The court further concluded that Guttu understood the elements of the charges at the time of the plea and that Guttu's plea was therefore knowing, intelligent, and voluntary. Accordingly, the court denied Guttu's postconviction motion for plea withdrawal.

¶6 As indicated above, Guttu now appeals the order denying his postconviction motion. We reference additional facts as needed in our discussion below.

[2] It is undisputed that Guttu's conviction on the second-degree sexual assault charge could serve as a predicate offense for a Chapter 980 commitment.

[3] In this appeal, Guttu has abandoned his argument that the circuit court failed to ensure that he understood the elements of the sexual assault charge, but, as discussed in the text below, he renews his argument that the court failed to ensure that he understood the elements of the aggravated battery charge.

DISCUSSION

¶7 In the plea withdrawal context, courts distinguish between ***Bangert***-type[4] and ***Bentley***-type[5] motions. We need not explain all of the differences between the two types. It is sufficient for our purposes here to note that ***Bangert***-type challenges generally involve an allegation that there was some defect in the plea colloquy, while ***Bentley***-type challenges generally involve an allegation that the plea was defective on some other basis, such as ineffective assistance of counsel. *See* ***State v. Howell***, 2007 WI 75, ¶74, 301 Wis. 2d 350, 734 N.W.2d 48.

¶8 In this appeal, Guttu makes one of each type of challenge. First, Guttu argues that he should be allowed to withdraw his plea to the sexual assault charge because Attorney DeBord was ineffective in failing to raise Guttu's alleged lack of awareness of Chapter 980 as a ground for pre-sentencing plea withdrawal on that charge. This is a ***Bentley***-type challenge. Second, Guttu argues that he should be allowed to withdraw his plea to the aggravated battery charge because his plea to that charge was not knowing, intelligent, and voluntary, based on the circuit court's alleged failure to ensure that Guttu sufficiently understood the elements of that charge. This is a ***Bangert***-type challenge. We address each in turn.

A. Sexual Assault Charge

¶9 In order to put Guttu's first argument in context, we review the differing standards for plea withdrawal motions made before and after sentencing:

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[4] ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986).

[5] ***State v. Bentley***, 201 Wis. 2d 303, 548 N.W.2d 50 (1996).

> Withdrawal of a plea may occur either before sentencing, or after sentencing. When a defendant moves to withdraw a plea before sentencing, "a circuit court should 'freely allow a defendant to withdraw his plea prior to sentencing for any fair and just reason, unless the prosecution [would] be substantially prejudiced.'" However, this rule should not be confused "'with the rule for post-sentence withdrawal where the defendant must show the withdrawal is necessary to correct a manifest injustice.'" ….
>
> When a defendant moves to withdraw a plea after sentencing, the defendant "carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a 'manifest injustice.'" Here, the burden is on [the defendant] to prove that plea withdrawal is warranted because "the state's interest in finality of convictions requires a high standard of proof to disturb that plea." Therefore, in order to disturb the finality of an accepted plea, the defendant must show "'a serious flaw in the fundamental integrity of the plea.'"

State v. Cain, 2012 WI 68, ¶¶24-25, 342 Wis. 2d 1, 816 N.W.2d 177 (citations omitted).

¶10 Thus, the "fair and just reason" standard that applies to a motion made before sentencing is considerably less stringent than the "manifest injustice" standard that applies when the motion is made after sentencing. Among the circumstances that may constitute a manifest injustice is the circumstance in which the defendant received ineffective assistance of counsel. ***Id.***, ¶26.

¶11 Guttu argues that it would be a manifest injustice to allow his plea to the sexual assault charge to stand because he received ineffective assistance of counsel in connection with that plea. More specifically, as already stated, Guttu argues that he received ineffective assistance of counsel because, in moving for plea withdrawal before sentencing, Attorney DeBord failed to raise Guttu's alleged lack of awareness of Chapter 980 as a basis.

¶12 In order to address Guttu's argument, and the State's response, we first summarize two opinions of this court: ***State v. Myers***, 199 Wis. 2d 391, 544 N.W.2d 609 (Ct. App. 1996), and ***State v. Nelson***, 2005 WI App 113, 282 Wis. 2d 502, 701 N.W.2d 32.

¶13 In ***Myers***, the defendant sought to withdraw his plea after sentencing on the ground that the circuit court had not informed him at the time of his plea that his sexual assault conviction could lead to a Chapter 980 commitment. ***Myers***, 199 Wis. 2d at 393-94. We concluded that the potential for a future Chapter 980 commitment is a collateral consequence of a plea and that the defendant did not need to have "knowledge of the potential for a future chapter 980 commitment in order to make his plea knowing and voluntary." ***Id.*** at 394-95. The basis for this decision was that any potential commitment was contingent on a future commitment hearing. *See* ***id.*** While the underlying conviction could serve as a predicate offense for, and therefore an essential element of, a potential commitment, the conviction itself would not trigger commitment. *See* ***id.***

¶14 In ***Nelson***, the defendant entered guilty pleas to charges that included sexual assault. *See* ***Nelson***, 282 Wis. 2d 502, ¶5. The defendant subsequently changed attorneys and, prior to sentencing, the new attorney filed a motion seeking plea withdrawal, asserting that the defendant's previous attorney neglected to advise the defendant that the conviction resulting from the defendant's plea could provide the predicate offense for a Chapter 980 commitment. ***Id.***, ¶¶5-6. The circuit court concluded that the defendant established a fair and just reason for pre-sentencing plea withdrawal, but denied plea withdrawal on the ground that withdrawal would be prejudicial to the State.

Id., ¶6. On appeal, we agreed with the circuit court that the defendant had shown a fair and just reason:

> Just like the lack of knowledge as to the sex offender registration requirement is a fair and just reason to withdraw one's plea, so too is the lack of knowledge that one is now eligible for a Chapter 980 commitment a fair and just reason. In fact, eligibility for a Chapter 980 commitment has the potential for far greater consequences than registering as a sex offender. Sex offender registration merely centralizes information already in the public domain. A Chapter 980 commitment, however, could be lifelong.

Id., ¶15. However, we disagreed with the circuit court as to prejudice, concluding that the State failed to show that plea withdrawal would result in substantial prejudice to the State. ***Id.***, ¶22. We therefore reversed and remanded so that the defendant could withdraw his pleas to the sexual assault counts. ***Id.***, ¶¶3, 22, 25.

¶15 In ***Nelson***, we distinguished ***Myers*** as a case in which plea withdrawal was sought "after sentencing in a postconviction motion and, thus, was subject to a different and more stringent test." ***Id.***, ¶16 n.3. We did not elucidate further.

¶16 Guttu contends that ***Myers*** is distinguishable from his case because, among other reasons, ***Myers*** involved the *court's* failure to provide information and did not involve the question of ineffective assistance of counsel. In contrast, Guttu argues here that Attorney DeBord was ineffective in failing to raise Guttu's alleged lack of Chapter 980 knowledge as a ground under ***Nelson*** for pre-sentencing plea withdrawal.

¶17 The State argues, in part, that Guttu's case is not materially different from ***Myers***. The State does not, however, develop this part of its argument in significant detail. The State concedes that, "under ***Nelson***, a defendant's lack of

knowledge about Chapter 980 provides a fair and just reason for allowing the defendant to withdraw his plea prior to sentencing."

¶18 We will assume, without deciding, that ***Myers*** does not preclude Guttu's ineffective assistance of counsel claim. Nonetheless, the question remains whether Guttu is correct that, given ***Nelson***, Attorney DeBord was ineffective. We conclude for the reasons that follow that the circuit court correctly determined that Guttu fails to show prejudice, and therefore Guttu fails to show ineffective assistance of counsel.

1. Ineffective Assistance of Counsel Standards

¶19 To prevail on an ineffective assistance of counsel claim, "a defendant must demonstrate that (1) counsel's performance was deficient, and (2) the deficiency was prejudicial." ***State v. Harbor***, 2011 WI 28, ¶67, 333 Wis. 2d 53, 797 N.W.2d 828. "We need not address both components of the inquiry if the defendant fails to make an adequate showing on one." ***Id.***

¶20 To show that the performance was deficient, a defendant must show that counsel made errors so serious that counsel was not functioning as the effective "counsel" guaranteed by the Sixth Amendment. ***State v. Balliette***, 2011 WI 79, ¶64, 336 Wis. 2d 358, 805 N.W.2d 334. One example is when a defendant shows that counsel was "objectively unreasonable" in "failing to find arguable issues." *See* ***id.***

¶21 To prove prejudice, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a

probability sufficient to undermine confidence in the outcome." ***Harbor***, 333 Wis. 2d 53, ¶72 (citation omitted).

¶22 "'[B]oth the performance and prejudice components … are mixed questions of law and fact.'" ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985) (citation omitted). The circuit court's findings of fact will not be overturned unless clearly erroneous. ***State v. Johnson***, 153 Wis. 2d 121, 127, 449 N.W.2d 845 (1990). However, whether the attorney's performance was deficient and whether the deficiency prejudiced the defense are questions of law that we review de novo. ***Id.*** at 128.

2. Application of Standards

¶23 As indicated above, the circuit court concluded that Attorney DeBord's performance in moving for pre-sentence plea withdrawal was not deficient because, in the circuit court's words, DeBord was not required to "locate all issues available." The court also concluded, without further explanation, that Guttu failed to show prejudice.

¶24 We will assume, without deciding, that Attorney DeBord's performance was deficient. We nonetheless conclude for the following reasons that Guttu fails to show prejudice.

¶25 Guttu's prejudice argument is a nuanced one that is based on ***Nelson*** and on the differing standards for pre- and post-sentencing plea withdrawal. Guttu summarizes his argument this way:

> [H]ad Attorney DeBord argued Chapter 980 and ***Nelson*** during the presentencing hearing, Guttu would not now be left with arguing manifest injustice. Rather, had Attorney DeBord argued Chapter 980 and ***Nelson***, and had the trial court still denied the presentence motion, this appellate

> court's standard of review of the trial court would be as it was in ***Nelson***. It would have been an easier standard of review than the present manifest injustice standard.

Similarly, Guttu summarizes his argument in another portion of his briefing as follows:

> [H]ad Attorney DeBord raised the Chapter 980 issue, even if the trial court had still denied the [pre-sentencing] plea withdrawal motion, at least Guttu could have positioned himself as the defendant in ***Nelson*** did. By Attorney DeBord not making the argument, Guttu now must allege[] ineffective assistance of counsel. Therefore, Guttu was prejudiced by Attorney DeBord.

In short, Guttu's argument is that Attorney DeBord's failure to raise the Chapter 980 issue under ***Nelson*** before sentencing put Guttu in a much weaker position to seek plea withdrawal after sentencing.

¶26 While Guttu's argument has some superficial attraction, it is defective when viewed under the correct test for prejudice.

¶27 Guttu's argument frames the test incorrectly. The test is not, as Guttu's argument suggests, whether the defendant is in a comparatively weaker position because of his counsel's errors. Undoubtedly, that is often the case, including when, as here, counsel's performance results in the forfeiture of direct review of an issue. However, we do not assume prejudice in such circumstances. The test is as stated above: whether "there is a reasonable probability that, but for counsel's unprofessional errors, *the result of the proceeding would have been different*." ***Harbor***, 333 Wis. 2d 53, ¶72 (emphasis added). Thus, what Guttu needed to show is that there is a reasonable probability that, but for Attorney DeBord's failure to raise the Chapter 980 issue before sentencing, Guttu would have been permitted to withdraw his plea to the sexual assault charge. We conclude that Guttu failed to carry his burden of proving a reasonable probability

that, had Attorney DeBord raised Guttu's alleged lack of awareness of Chapter 980 before sentencing, Guttu would have been allowed to withdraw his plea to the sexual assault charge.

¶28 Applying the correct test, Guttu's argument is defective because it is based on a factual premise that we reject based on our reading of the record, namely the premise that the record shows that Guttu lacked knowledge of Chapter 980 when he entered his plea.[6]

¶29 It is true that Guttu averred and testified as part of his postconviction motion that he was not aware of Chapter 980 when he entered his plea. It is also true that the circuit court made no express finding as to whether it believed these assertions. However, Guttu fails to provide any reasonable interpretation of the court's prejudice determination. We conclude that the most likely interpretation, as we explain below, is that the court made a credibility determination that Guttu did not aver or testify truthfully in claiming that he was ignorant on this topic at the time of the plea. *See* ***State v. Leutenegger***, 2004 WI App 127, ¶ 30 n.7, 275 Wis. 2d 512, 685 N.W.2d 536 (We "assume facts, reasonably inferable from the record, in a manner that supports the trial judge's decision.").

¶30 And, as to that determination, as discussed further below, it is evident to us that the circuit court had a sound basis to discredit Guttu's assertions

[6] Guttu argues that, at minimum, we should remand for additional fact finding because the circuit court failed to make an express finding as to whether Guttu knew about Chapter 980 when he entered his plea. The State takes the position that, if we otherwise agree with Guttu's argument based on ***State v. Nelson***, 2005 WI App 113, 282 Wis. 2d 502, 701 N.W.2d 32, such a remand would be appropriate. However, we conclude for the reasons given in the text that remand would not be appropriate because Guttu fails to show prejudice.

of ignorance regarding the potential for Chapter 980 commitment. We therefore agree with the circuit court that Guttu failed to show prejudice.

¶31 In reaching this conclusion, we rely in particular on the record of what occurred during Guttu's pre-sentencing plea withdrawal hearing addressing other, related issues. There, the circuit court found that Guttu lacked credibility on a closely related point, namely Guttu's claim that he did not know about the sex offender registry, or at least had not discussed the registry with his attorney before entering his plea.[7] The court made this finding based, in part, on a further finding that Guttu's case had been pending for a long time and that Guttu had shown a high level of involvement in his case, "discussing and … digesting every bit of law and fact" relating to it.

¶32 The record of postconviction proceedings further supports our conclusion that the circuit court discredited Guttu's claim that he lacked knowledge of the potential for Chapter 980 commitment. Attorney Reetz's postconviction affidavit and testimony showed that, although Reetz had no specific recollection of or record of discussing Chapter 980 with Guttu, it was Reetz's customary practice to advise clients of potential Chapter 980 consequences when they pled to offenses that could constitute predicate offenses for a Chapter 980 commitment.

¶33 Further, Guttu's affidavit on the topic suggests a credibility problem on its face. Specifically, Guttu averred that, at the prison meeting where he first

[7] Under WIS. STAT. § 301.45, Wisconsin's sex offender registration statute, offenders may be required to register with the Department of Corrections as sex offenders, based on convictions for defined offenses, and may be prosecuted for failure to register.

learned of Chapter 980, *not one* of the fourteen to seventeen inmates that were present had ever heard of civil commitment under Chapter 980, and that the inmates all "gasped" when informed of it. Considered alone, Guttu's highly unlikely account might not undermine his ability to demonstrate prejudice. However, considered in combination with the other factors we list, it supports the circuit court's conclusion that Guttu failed to show prejudice and our conclusion that the court discredited Guttu's claim that he was unaware of the potential for Chapter 980 commitment.

¶34 Even Guttu's postconviction counsel recognized Guttu's credibility problem on the Chapter 980 issue, and could do little to rehabilitate him. Specifically, during the postconviction hearing, counsel addressed the topic during examination of Guttu as follows:

> Q …. Well, the Court found at the [presentencing plea] withdrawal hearing that [the court] basically didn't believe you. [The court] said that [it] thought you did know what the sex registry program was, correct?
>
> A Correct.
>
> Q So, how—what's the best way for us to believe you today that you didn't know about 980? You knew about the registry, but you didn't know about Chapter 980. Why is that?
>
> A I've never heard that in the news or anywhere else.

Guttu's response, if viewed in isolation, may have provided a plausible explanation for Guttu's claim that he lacked awareness of Chapter 980, but it was an unlikely one, given all the other information in the record.

¶35 During closing argument to the postconviction court, defense counsel acknowledged, "Now, the Court did find … in the plea withdrawal hearing that the Court did not believe Mr. Guttu as to his representation that he did

not know of the sex registration law. I would ask the Court to not automatically find that he would have known of 980 also." Thus, counsel's argument all but conceded that there was an ample basis for the circuit court to reject Guttu's claim of ignorance, and simply urged the court not to do so "automatically."

¶36 In sum, the record supports the circuit court's implicit finding that Guttu was not credible in asserting that he did not know about Chapter 980 when he entered his plea. Therefore, we agree with the circuit court that Guttu fails to carry his burden of showing prejudice based on Attorney DeBord's failure to raise Guttu's alleged lack of knowledge as a ground for pre-sentencing plea withdrawal under ***Nelson***. Guttu thus has not shown that he should be allowed to withdraw his plea to the sexual assault charge based on ineffective assistance of counsel in connection with that charge.[8]

[8] We need not and do not rely on the State's argument that Guttu's ineffective assistance of counsel claim fails because Guttu did not sufficiently allege or prove that he would not have entered his plea to the sexual assault charge if he had known about Chapter 980 at the time. The State bases this argument on a statement in ***Bentley***. In ***Bentley***, the court stated that, "[i]n order to satisfy the prejudice prong of the [ineffective assistance of counsel] test, the defendant seeking to withdraw his or her plea must allege facts to show 'that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" ***Id.*** at 312 (emphasis added) (citation omitted).

We do not understand the State's reliance on this statement in ***Bentley***. In ***Bentley***, the ineffective assistance of counsel claim pertained to counsel's failure to provide correct information regarding the defendant's parole eligibility date *before* the defendant entered his plea. *See* ***id.*** at 307, 315. Here, in contrast, Guttu has been careful to explain that he is not challenging his plea counsel's (Attorney Reetz's) failure to provide information about Chapter 980. Guttu's claim is that his subsequent counsel (Attorney DeBord) failed to raise Guttu's alleged lack of Chapter 980 knowledge as a ground for pre-sentencing plea withdrawal under ***Nelson***. Thus, so far as we can tell, it makes no sense to ask, in the words of ***Bentley***, whether "there is a reasonable probability that, but for [Attorney DeBord]'s errors, [Guttu] would not have pleaded guilty," because by the time Attorney DeBord was acting as Guttu's attorney, Guttu had already entered his plea.

B. Aggravated Battery Charge

¶37 We turn to Guttu's argument that his plea to the aggravated battery charge was not knowing, intelligent, and voluntary. Guttu makes this argument under ***Bangert***, meaning that Guttu alleges that his plea was not knowing, intelligent, and voluntary because of a defect in the plea colloquy. *See* ***Howell***, 301 Wis. 2d 350, ¶74.

¶38 In a ***Bangert*** motion, the procedure is as follows.

> If the motion establishes a prima facie violation of WIS. STAT. § 971.08 or other court-mandated duties and makes the requisite allegations [that the defendant did not know or understand information that should have been provided at the plea hearing], the court must hold a postconviction evidentiary hearing at which the state is given an opportunity to show by clear and convincing evidence that the defendant's plea was knowing, intelligent, and voluntary despite the identified inadequacy of the plea colloquy…. In meeting its burden, the state may rely "on the totality of the evidence, much of which will be found outside the plea hearing record." For example, the state may present the testimony of the defendant and defense counsel to establish the defendant's understanding. The state may also utilize the plea questionnaire and waiver of rights form, documentary evidence, recorded statements, and transcripts of prior hearings to satisfy its burden.

State v. Brown, 2006 WI 100, ¶40, 293 Wis. 2d 594, 716 N.W.2d 906 (citations and footnotes omitted).

¶39 Guttu argues that his plea to the aggravated battery charge was not knowing, intelligent, and voluntary because the circuit court failed to determine that Guttu entered the plea with a sufficient understanding of the elements of that charge. He cites WIS. STAT. § 971.08(1)(a), which provides, in part, that the court

must determine that a plea is made "with understanding of the nature of the charge and the potential punishment if convicted."[9]

¶40 As indicated above, the circuit court held an evidentiary hearing and concluded that Guttu's plea to the aggravated battery charge was knowing, intelligent, and voluntary. We agree and we conclude that, whether or not Guttu met his initial burdens entitling him to that hearing, the State in any case proved by clear and convincing evidence based on the entire record that Guttu's plea was knowing, intelligent, and voluntary.

¶41 In deciding whether a defendant's plea is knowing, intelligent, and voluntary, we accept the circuit court's findings of historical fact unless they are clearly erroneous. ***State v. Hoppe***, 2009 WI 41, ¶45, 317 Wis. 2d 161, 765 N.W.2d 794. However, we review de novo the question of whether those facts show that the plea was knowing, intelligent, and voluntary. ***Id.***

¶42 Guttu's argument is based on errors in the plea questionnaire and waiver form. He points to three: (1) although the top portion of page one of the form correctly states "Aggravated Battery w/ Intent," the bottom portion of that page shows the lesser crime of "Substantial Battery;" (2) the form references an "attached sheet," and the attached sheet is for a misdemeanor battery offense; and (3) page one of the form shows the maximum penalty for a substantial battery conviction.

[9] Guttu also cites WIS. STAT. § 971.08(1)(b), which provides that the circuit court must "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." However, Guttu does not develop any separate argument involving § 971.08(1)(b) and we therefore consider § 971.08(1)(b) no further. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (court of appeals need not address insufficiently developed arguments).

¶43 The State concedes that the form contains errors. The State argues, however, that other portions of the record establish that Guttu understood that he was pleading to aggravated battery, understood the elements of aggravated battery, and understood the maximum penalty for aggravated battery.

¶44 The errors in the form are unfortunate and, especially in combination, unsettling. Nonetheless, we agree with the State for four reasons.

¶45 First, as the State points out, the circuit court received the form at the beginning of the plea hearing, and the ensuing colloquy supports a conclusion that, despite the form's errors, Guttu understood that he was pleading to aggravated battery, understood the elements, and understood the maximum penalty. During the pertinent portion of the colloquy, a question arose as to whether Guttu had an opportunity to read the final amended complaint. Guttu stated, "But the one that was amended to—increasing the charge and adding the charge, *increased it from substantial to aggravated* … I have not read that Criminal Complaint, the Amended Criminal Complaint." (Emphasis added.) In response, the court read to Guttu from the amended information, which indicated to Guttu the elements of aggravated battery and the maximum penalty:

> [T]he above-named defendant, on or about Monday, March 23, 2009 … did cause great bodily harm to [the alleged victim] by an act done with intent to cause great bodily harm to that person, contrary to Section 940.19(5) of the Wisconsin Statutes, a Class E felony, and upon conviction, may be fined not more than $50,000 or imprisoned not more than 15 years or both.

At this point in the colloquy, neither Guttu nor his counsel indicated any confusion or objection regarding the aggravated battery charge.

¶46 At another point in the colloquy, the court and Guttu had a second exchange regarding the aggravated battery charge and the maximum penalty:

> THE COURT: …. I may have to apologize if I am being redundant, Mr. Guttu. You understand the maximum penalty *for the Aggravated Battery* is $50,000 or 15 years or both?
>
> TRAVIS GUTTU: Yes.

(Emphasis added.) Again, neither Guttu nor his counsel indicated any confusion or objection regarding the aggravated battery charge.

¶47 Second, the circuit court made a finding of fact at the postconviction hearing that Attorney Reetz reviewed the pattern jury instructions for aggravated battery with Guttu before Guttu entered his plea. This finding is supported by evidence in the record, including the following: Attorney Reetz's testimony; a copy of the pattern jury instructions in the record, located near the plea questionnaire and waiver form; the court's recollection that it had directed court staff to provide the jury instructions to Attorney Reetz at the time of Guttu's plea; and the court's belief based on its prior experience that the proximity of the pattern jury instructions and plea form in the record showed that Attorney Reetz had reviewed the instructions with Guttu before submitting them as a packet to the court.[10]

¶48 Guttu asserts that "it is not plausible" that Attorney Reetz could have gone over the correct elements using the correct jury instructions while at the same

[10] Guttu does not argue that the circuit court could not rely, at least in part, on its recollection and prior experience. We take this as a concession by Guttu that the court could consider its recollection and prior experience.

time providing the circuit court with the error-filled form. We disagree. The circuit court could reasonably find that Attorney Reetz reviewed the correct jury instructions with Guttu even if Attorney Reetz made errors on the form.

¶49 Third, to the extent Guttu averred or testified that he did not understand that he was pleading to aggravated battery, did not understand the elements of aggravated battery, or did not understand the maximum penalty, it is apparent that the circuit court discredited Guttu's averments and testimony, at least implicitly.[11] This court may not second-guess the court's credibility determinations. *See* ***Cogswell v. Robertshaw Controls Co.***, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶50 Fourth, Guttu points to nothing in the record suggesting that he had a reduced capacity for understanding, as did the defendant in ***Brown***, the primary case on which Guttu relies. *See* ***Brown***, 293 Wis. 2d 594, ¶9 (defendant was "illiterate and had been diagnosed with reading and mathematics disorders," and attorney representing defendant stated that defendant was "as deficient [in reading] as anybody I've ever represented in 20-some years"). Nor is ***Brown*** otherwise analogous. *See* ***id.***, ¶¶11-12, 53, 58, 79 (concluding that circuit court must hold hearing on plea withdrawal when there was no plea questionnaire and waiver form, the court never addressed any elements of the crimes to which the defendant

[11] The relevant portions of Guttu's affidavits and testimony are not clear in these respects. What is clear, however, is that the court did not credit Guttu on the most pertinent points. For example, Guttu averred that Attorney Reetz failed to review the jury instructions for aggravated battery with him, but the court clearly rejected that averment when it made a finding of fact to the contrary based on other evidence. *See* ¶47, *supra*. Guttu also claimed in both his affidavit and in testimony that he was unable to pay attention to what the circuit court was saying during the plea colloquy because he was upset and confused by various aspects of his plea and plea hearing, but it is apparent that the circuit court must have implicitly rejected that claim in concluding that Guttu's plea was knowing, intelligent, and voluntary.

pled, and the defendant adequately alleged that he did not understand the nature of the charges).

¶51 Taking all of these considerations together, we are satisfied that the State showed by clear and convincing evidence that Guttu's plea to the aggravated battery charge was knowing, intelligent, and voluntary.

CONCLUSION

¶52 In sum, we affirm the circuit court order denying Guttu's consolidated motions for postconviction relief.

By the Court.—Order affirmed.

Not recommended for publication in the official reports.