STATE OF WISCONSIN CIRCUIT COURT BARRON COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

LESLIE ALLEN TOEWS,

Defendant.

PLEA HEARING

Case No. 21 CF 254

The above-entitled matter came on to be heard before the Honorable J. M. Bitney, Circuit Court Judge - Branch 2, on January 7, 2022, at the hour of 10:30 a.m. in the Barron County Justice Center, Barron, Wisconsin.

APPEARANCES

JULIE L. MATUCHESKI, Assistant District Attorney, 1420 State Highway 25 North, Barron, Wisconsin 54812, appearing as counsel on behalf of the State.

SCOTT SCHLOUGH, 1561 Commerce Court, Suite 220, River Falls, Wisconsin, 54022, appearing as counsel on behalf of the Defendant.

LESLIE ALLEN TOEWS, the Defendant, appearing personally.

THE COURT: This is State of Wisconsin v. Leslie Toews, 21 CF 254. Mr. Toews appears in person with his attorney, Mr. Scott Schlough. The State is here by ADA Matucheski. I assume you're pinch-hitting for Mr. O'Boyle?

MS. MATUCHESKI: Yes, Your Honor.

THE COURT: The parties have reached a plea agreement in this case. What are the conditions in the plea agreement, Mr. Schlough?

MR. SCHLOUGH: Judge, the agreement calls for Mr. Toews to plead to an amended count one. That would be amended to third-degree sexual assault under Section 940.225(3). There's an agreement to request a Presentence Investigation. The State agrees to follow the PSI, except to the extent that the PSI recommends probation, the State is free to argue for conditional jail and/or imposed and stayed sentences. The defense is completely free to argue.

There is also a secondary agreement not part of the plea agreement, Your Honor, that I reached with Mr. O'Boyle regarding bond. We've agreed to jointly request that bond continue, the reason being that Mr. Toews recently had COVID, he's cleared his quarantine period and has made his appearance today, however is still suffering some of the longer-running ill effects,

primarily fatigue. We've agreed that given that, his low flight risk in general, that we would jointly request bond continue in this matter.

THE COURT: Ms. Matucheski, is that a recitation of the plea agreement that's been reached?

MS. MATUCHESKI: Your Honor, that's an accurate representation of the plea agreement and the plea agreement with respect to recommendation of the bond.

THE COURT: Has the State complied with victim's rights?

MS. MATUCHESKI: Yes, Your Honor.

THE COURT: Specifically, has the victim and/or the victim's family been told of the terms and conditions of this plea agreement?

MS. MATUCHESKI: Yes.

THE COURT: Are they opposed to it or not?

MS. MATUCHESKI: Your Honor, I can't speak to their opinions as to the plea agreement. It's my understanding that they do not object.

THE COURT: Is that true?

All right, for the folks that are here that maybe don't understand all the legal ins and outs of this, I'll explain this to you. The defendant is -- has agreed to plead guilty to an amended felony count of

third-degree sexual assault. That is still a felony level offense, the potential penalties for which can include a fine of up to $25,000 and imprisonment for up to ten years in the Wisconsin State Prison System.

He's not going to be sentenced today because there needs to be a lengthy report generated by the corrections department concerning his background, what his rehabilitative needs might be, and what they think the appropriate penalties should be. That report is called a Presentence Investigation report. That will be generated within the next 30 to 45 days. They will contact the victim and her family or his family and get your input and see the impact that this has had on the family, the victim, and what you think the appropriate sentence should be. That will all be something that you have input on that will be contained in the report that I see.

When you get to sentencing, you'll also be welcome to attend the sentencing hearing, and in addition to anything you've said to the PSI author, you'd be welcome to make a statement to me personally as the judge at the time of sentencing as to what you think an appropriate sentence might be under all the facts and circumstances of this case.

When we get to sentencing, the State will be

able to make an argument consistent with the parameters that have been set forth by Mr. Schlough and agreed to by Ms. Matucheski. Mr. Schlough will then be able to make an argument on behalf of Mr. Toews as to what he thinks might be a fair and just sentence. Mr. Toews will then be able to address the Court personally with his thoughts and feelings about what happened and might be an appropriate disposition, it's called his right of allocution. He, in fact, gets the last word that I hear before I ultimately decide what I think is a just and fair sentence.

What I will tell him momentarily and what I will tell all of you now, I'm not bound by anybody's recommendation. I have the discretion to sentence him to what I feel is just and fair under all the facts and circumstances, taking into consideration the seriousness of the offense, his rehabilitative needs and character, and whether there's a need to protect the public, and we'll get into what all that means in greater detail once we get to sentencing. But Mr. Toews has been told, I assume, by his attorney that once he enters his plea, he understands he is, by and large, at the mercy of the Court ultimately as to what is going to be done to him for sentencing. Is that your understanding, Mr. Toews?

THE DEFENDANT: Yes.

THE COURT: Do you folks understand that?

All right, the Court will approve the amendment that has been proposed amending this from a Class C to a Class -- what was the classification? E?

MR. SCHLOUGH: It's a Class G felony.

MS. MATUCHESKI: I believe it is a Class G felony, as well.

THE COURT: Which will be third-degree sexual assault punishable by a fine of up to $25,000, and as I indicated, incarceration for up to ten years in the Wisconsin State Prison System.

I have been handed a Plea Questionnaire and Waiver of Rights form. Mr. Toews, is that your signature on the second page?

THE DEFENDANT: Yes, sir.

THE COURT: Is everything on the form true and correct, to the best of your knowledge?

THE DEFENDANT: Yes.

THE COURT: Has anybody made any threats or promises to get you to enter a plea in this case?

THE DEFENDANT: No.

THE COURT: Do you understand you would have had the right to take this case to trial had you wished to do that?

THE DEFENDANT: Yes.

THE COURT: Have you had enough time to discuss this with your attorney, Mr. Schlough?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the work that he's done on your behalf?

THE DEFENDANT: Yes, sir.

THE COURT: Has he answered all of your questions?

THE DEFENDANT: Yes.

THE COURT: Have you and him discussed your options?

THE DEFENDANT: Yes, sir.

THE COURT: Including your right to trial?

THE DEFENDANT: Yes.

THE COURT: Do you understand that by entering a plea today, there will not be a trial?

THE DEFENDANT: Yes. Yes, sir.

THE COURT: You also understand that by entering a plea today, you will be giving up important constitutional rights that you are entitled to as a defendant?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what those are?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need me to repeat them or

recite them any further?

THE DEFENDANT: No.

THE COURT: Again, you've heard me recite what the penalties are that you're facing for this amended charge, true?

THE DEFENDANT: Yes, sir.

THE COURT: And did you hear me when I said that I'm not bound by the plea agreement, I have the discretion to sentence you to whatever I think is appropriate under all the facts and circumstances?

THE DEFENDANT: Yes, sir.

THE COURT: Theoretically, that could include the maximum penalty of ten years in prison. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Did Mr. Schlough go through the elements of the offense that the State would have to prove before you could be convicted of the charge that you're pleading to this morning?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what the elements of third-degree sexual assault are?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need me to explain or review them any further for you at this time?

THE DEFENDANT: No, sir.

THE COURT: I also have to have a factual basis upon which to accept your plea and ultimately to sentence you. Have you previously read the Criminal Complaint and discussed the contents of it with Mr. Schlough?

THE DEFENDANT: Yes, sir.

THE COURT: Do you believe that the Criminal Complaint accurately describes what occurred from roughly March of 2011 through November of 2011?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Schlough, stipulate to a factual basis?

MR. SCHLOUGH: Yes, Your Honor.

THE COURT: And as I indicated, Mr. Toews, do you understand this is a felony level offense that you're pleading to?

THE DEFENDANT: Yes, sir.

THE COURT: Which means it would be unlawful for you to possess or own a firearm?

THE DEFENDANT: Yes, sir.

THE COURT: It will also be unlawful for you to vote in any state, federal or local election until after your sentence is completed, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: And if you're not a United States

citizen, it could result in you being deported or excluded from the country. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: It would also require that you report as a registered sex offender, do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Toews, do you have any questions before I ask you for your plea that you would like to discuss with Mr. Schlough?

THE DEFENDANT: No.

THE COURT: Do you have any questions of me?

THE DEFENDANT: No, sir.

THE COURT: What is your plea, then, to the amended count of third-degree sexual assault?

THE DEFENDANT: Guilty.

THE COURT: Upon your plea of guilty, the Court finds you guilty and orders that a Judgment of Conviction be entered. I am satisfied under all -- in all respects that Mr. Toews' plea has been entered freely, intelligently and voluntarily with the assistance of counsel, and that a factual basis exists to accept his plea and ultimately to sentence him based upon the allegations that are stipulated to in the Criminal Complaint.

The Court will order that the Department of Corrections prepare a presentence investigative report and that this matter be returned for sentencing purposes approximately 60 days from today's date, and we will set that date momentarily.

Mr. Schlough, do you have your calendar?

MR. SCHLOUGH: Yes.

MS. MATUCHESKI: Yes.

THE COURT: March 4th, Friday?

MR. SCHLOUGH: I'm available all day, Judge.

MS. MATUCHESKI: Any time works for the State, as well.

THE COURT: Does that work for the victim's family?

March 4th, 2:00. Does that work for everyone?

MR. SCHLOUGH: Works here, Judge.

THE COURT: All right, March 4th at two p.m. for sentencing. Although the defendant is not entitled to bond because the presumption of innocence no longer attaches because he's now been convicted of a serious felony offense, the parties have stipulated that he should continue to be released on bond and that he does not have a history of failing to appear. The Court will grant that stipulation and allow Mr. Toews to remain on bond. Do you understand that, Mr. Toews?

THE DEFENDANT: Yes.

THE COURT: You will, however, be prohibited from leaving the state of Wisconsin without written permission from the Court. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: The other terms and conditions of your bond will remain in full force and effect. Do you understand that, as well?

THE DEFENDANT: Yes, sir.

THE COURT: That includes no contact with [redacted], no contact with any minors under the age of -- no unsupervised contact with minors under the age of 16; notify the Clerk of the Court of any change of address or phone within 24 hours; appear in person as ordered by the Court; not to commit any further criminal offenses during the pendency of this action.

You are also ordered to cooperate in the drafting of the PSI, which means I want you to contact the Department of Corrections by Monday of next week, and you won't actually be interviewed then, but you'll set up the interview that they would have you come in, go over your history, background, employment status, all that kind of stuff. I want you to make those arrangements by next Monday. Do you understand that?

THE DEFENDANT: I believe so.

THE COURT: If I contact the Department of Corrections later than that and you haven't talked to them, I will likely issue a warrant for your arrest, revoke your bond and you'll be held in custody until further proceedings. Understand?

THE DEFENDANT: Yes, sir.

THE COURT: Anything else for the record, Ms. Matucheski?

MS. MATUCHESKI: No, Your Honor.

THE COURT: Mr. Schlough?

MR. SCHLOUGH: No, Your Honor.

THE COURT: Madam Clerk, do you have any questions?

THE CLERK: Does he need to sign an amended bond?

THE COURT: No.

THE CLERK: How long for the sentencing hearing?

THE COURT: How long do you think it will take for sentencing, an hour and a half, two hours?

MR. SCHLOUGH: I would think an hour would be fine.

THE COURT: We'll make it an hour and a half just to be safe so that if people want to speak they can address the Court without time constraints. So we'll set

it for 2 to 3:30, and if it goes longer, we will go to 4:30. Hopefully we'll get it done in that time frame. Again, I would ask the victim's family to cooperate with the PSI, as well, and to appear for sentencing if you're able to do that, either in person or by Zoom.

We'll be in recess as to this file. Thank you, everyone. Have a good weekend.

MR. SCHLOUGH: Thank you, Judge.

(Proceedings were concluded at 10:54 a.m.)

STATE OF WISCONSIN)
) SS. CERTIFICATE
BARRON COUNTY)

I, Karen L. Schaaf, Official Court Reporter for the County of Barron, State of Wisconsin, do hereby certify that I reported the above matter on January 7, 2022, and that the foregoing transcript, consisting of 15 pages, has been transcribed by me by means of computer-aided transcription, and that it is a true and correct transcript of the proceedings had in said matter, to the best of my ability.

Dated this 14th day of January, 2022.

Electronically signed by
Karen L. Schaaf

_____

Karen L. Schaaf, RMR, CRR
Circuit Court - Branch 2
Barron County Justice Center
715-537-6259