

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 10, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-0044-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ROY MCGEE,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JOHN A. FRANKE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Schudson and Curley, JJ.

PER CURIAM. Roy McGee appeals from a judgment of conviction, following a guilty plea, for forgery as a party to a crime. He also appeals from an order denying his motion for postconviction relief. He raises three issues for review: (1) whether the trial court erred in accepting his guilty plea because the trial court failed to establish that he understood the nature of the charge against him; (2) whether the trial court erred in accepting his plea

because of a failure to inform him of each of the constitutional rights he was waiving; and (3) whether the trial court erroneously denied his postconviction motion without a hearing when the trial court concluded that he had failed to make a *prima facie* showing of an involuntary plea. We determine that the record conclusively establishes that McGee voluntarily, knowingly, and intelligently entered his guilty plea, and that the trial court properly rejected his postconviction motion without a hearing because his claims were mere conclusory allegations. Accordingly, we affirm the judgment and order.

I. BACKGROUND.

McGee and his brother, Charles, were shopping at a Village of Greendale shopping mall. At one store, McGee filled in the payee name and payment amount on a personal check and then gave the check back to his brother Charles who signed it as "Willie B. Franklin" and presented it in payment for merchandise. Police later stopped a van in which they were riding because it had stolen plates. The police found numerous fake identification cards, including three for "Willie B. Franklin." At the same time, the police also recovered sales receipts and merchandise which led them back to the Greendale store. There, the store clerk identified the McGee brothers as the men who made the purchase under the name of Willie B. Franklin. Charles was arrested and charged with forgery; he denied that his brother was involved with the forged check. McGee was arrested and charged with forgery as a party to a crime; he acknowledged that he helped his brother write the check but denied that he knew the check was forged.

McGee later pleaded guilty to the charge. Before the trial court accepted the guilty plea it held a colloquy with McGee, during which he was asked whether he understood everything in the guilty plea questionnaire and waiver of rights form, and whether his counsel had gone over the form with him. McGee answered "yes" to each question. Further, the trial court twice summarized the elements of forgery and asked McGee whether he understood that he was giving up the right to have these elements proven beyond a reasonable doubt, "including that you made some check or other writing ... and that you did so with the intent to defraud." McGee stated that he understood. McGee's counsel also informed the court that he had talked to him about the things the State needed to prove at trial and that he was satisfied that McGee

understood the charge. The trial court accepted the guilty plea and McGee was sentenced to six years in prison.

McGee later filed postconviction motions, arguing, among other things, that his guilty plea was not voluntarily or knowingly made. The trial court denied the motion without a hearing, concluding that McGee had not made the *prima facie* showing that he did not understand his plea and further that his motion stated “mere” conclusory claims that he was not aware he was giving up constitutional rights. This appeal follows.

II. ANALYSIS.

McGee first argues that the trial court erred in accepting his guilty plea because it did not establish that he understood the nature of the charge against him. The record conclusively refutes this argument.

In order to assure that a plea is knowingly, voluntarily, and intelligently entered, the trial court is obligated by § 971.08(1)(a), STATS., to ascertain that a defendant understands the nature of the charges to which he or she is pleading, the potential punishment for those charges, and the constitutional rights being relinquished by entering a guilty plea. *See State v. Bangert*, 131 Wis.2d 246, 260-62, 389 N.W.2d 12, 20-21 (1986). Whether a plea was entered knowingly, voluntarily and intelligently is a question of “constitutional fact” that we review without deference to the trial court. *Id.* at 283, 389 N.W.2d at 30. The trial court's findings of historical fact will not be upset unless they are clearly erroneous. *Id.* at 283-84, 389 N.W.2d at 30.

The Wisconsin Supreme Court established the following procedure for evaluating a defendant's postconviction challenge to a guilty plea:

Whenever the Section 971.08 procedure is not undertaken or whenever the court-mandated duties are not fulfilled at the plea hearing, the defendant may move to withdraw his plea. The initial burden rests with the

defendant to make a *prima facie* showing that his plea was accepted without the trial court's conformance with § 971.08 or other mandatory procedures as stated herein. Where the defendant has shown a *prima facie* violation of § 971.08(1)(a) or other mandatory duties, and alleges that he in fact did not know or understand the information which should have been provided at the plea hearing, the burden will then shift to the state to show by clear and convincing evidence that the defendant's plea was knowingly, voluntarily, and intelligently entered, despite the inadequacy of the record at the time of the plea's acceptance. The state may then utilize any evidence which substantiates that the plea was knowingly and voluntarily made. In essence, the state will be required to show that the defendant in fact possessed the constitutionally required understanding and knowledge which the defendant alleges the inadequate plea colloquy failed to afford him. The state may examine the defendant or defendant's counsel to shed light on the defendant's understanding or knowledge of information necessary for him to enter a voluntary and intelligent plea. The state may also utilize the entire record to demonstrate by clear and convincing evidence that the defendant knew and understood the constitutional rights which he would be waiving.

Id. at 274-75, 389 N.W.2d at 26 (citations omitted).

McGee argues that the trial court's colloquy did not establish that he understood "the elements of the charges against him." The trial court rejected this claim when denying McGee's postconviction motion, finding that at the plea hearing the trial court "specifically referred to the principal elements of forgery in addressing the defendant." Further, the trial court noted that the plea hearing transcript showed that McGee's counsel had talked to the defendant about "the things the state would have to prove if this went to trial."

The trial court correctly rejected McGee's argument. The record shows that the trial court at the plea hearing twice summarized the general elements of the forgery charge and that McGee acknowledged that he understood them. Further, McGee signed the guilty plea questionnaire and waiver of rights form, and acknowledged that his counsel had discussed the form with him. Finally, his counsel informed the court that he had discussed with him what the State would need to prove at trial for him to be convicted. McGee never established a *prima facie* violation of § 971.08 procedures, and thus the trial court could properly reject his plea-withdrawal motion.

McGee next argues that he was never informed by the trial court that he was waiving “constitutional” rights when he entered his guilty plea and that the trial court failed to mention all of the rights he was waiving. We reject McGee's argument.

The record shows that McGee signed the guilty plea questionnaire and waiver of rights form, which notified McGee of all the specific rights he was waiving with his plea, and which stated that these were “constitutional” rights. Further, the trial court conducted a lengthy colloquy in which it referenced all the rights McGee was waiving with the exception of the right against self-incrimination and the right to subpoena witnesses. These rights, however, had been previously discussed in the guilty plea questionnaire that McGee stated he had read and understood. The record establishes that McGee satisfactorily understood all the rights he was waiving by his guilty plea. There is no error here.

Finally, McGee argues that the trial court erred in concluding that he had failed to make a *prima facie* showing that his plea was involuntary, and denied his postconviction motion without an evidentiary hearing. In essence he is arguing that the trial court improperly interpreted *Bangert's* requirement that he make a *prima facie* showing that his plea was involuntary for him to receive a hearing on the issue. As the State correctly notes in its brief, however, the trial court properly rejected his claims without a hearing because McGee's argument in his postconviction motion was comprised of “conclusory allegations” without any explanation of how any alleged trial court error in the plea colloquy affected his decision to plead guilty.

A trial court may reject a defendant's motion without an evidentiary hearing if the motion contains only conclusory allegations. See *Nelson v. State*, 54 Wis.2d 489, 497-98, 195 N.W.2d 629, 633 (1972); see also *State v. Bentley*, 201 Wis.2d 303, 308-09, 548 N.W.2d 50, 53 (1996). Here the trial court properly determined that McGee's postconviction motion did not "set forth a *prima facie* violation of [§] 971.08(1)(a) or allege any actual misunderstanding or lack of knowledge." The trial court noted that the motion stated in "mere conclusory terms" that "at no point was [McGee] aware that he was giving up "constitutional" rights." In short, the trial court could properly conclude that McGee had failed to make a *prima facie* showing of a § 971.08 error, and thus deny his motion without a hearing.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.