

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 22, 1997

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

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-3164-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

Defendant-Respondent,

v.

LORI P. FAUST,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for La Crosse County: MICHAEL J. MULROY, Judge. *Affirmed.*

DYKMAN, P.J. Lori Faust appeals from a judgment convicting her of contributing to the delinquency of a child, contrary to § 948.40(1), STATS., and from an order denying her postconviction motion to withdraw her guilty plea. Faust contends that the circuit court erred in denying her postconviction motion because there was no factual basis to support her guilty plea. We disagree and therefore affirm.

BACKGROUND

The State charged Faust with contributing to the delinquency of a child, disorderly conduct, bail jumping and intimidation of a witness. As part of a plea agreement, the State agreed to dismiss and read in the bail jumping and intimidation of a witness charges and recommend that Faust be placed on probation in exchange for Faust pleading guilty to the other two charges. After accepting Faust's guilty pleas, the circuit court withheld sentence and placed Faust on two years' probation on each count. The court also ordered Faust to serve thirty days in jail as a condition of probation on the contributing to the delinquency of a child conviction.

Faust moved the court to withdraw her guilty plea to contributing to the delinquency of a child, arguing that there was no factual basis to support that plea. The criminal complaint alleged that on February 23, 1996, S.M.C., then thirteen years of age, and two other juvenile girls stayed overnight at the Faust residence with Faust and her daughter, J.C. The next day J.C. asked Faust to buy them some alcohol. Faust agreed and spent most of the afternoon drinking alcohol with the girls.

On February 24, 1996, S.M.C.'s mother tried to contact her at the Faust residence, but was unsuccessful. At 5:00 p.m., she went to the house and discovered that three of the girls, including S.M.C., were passed out. After several attempts, the mother was able to wake up S.M.C., who appeared very intoxicated. S.M.C. told her mother that she would not go home with her, became uncooperative and caused a disturbance. The mother was eventually able to get S.M.C. to her vehicle and take her home.

The State argued that these facts established that S.M.C. committed a delinquent act by engaging in disorderly conduct and that Faust contributed to this delinquent act by providing alcohol to S.M.C. The circuit court agreed and denied Faust's motion. Faust appeals.

DISCUSSION

Faust argues that the circuit court erred in denying her motion to withdraw her guilty plea. In *State v. Johnson*, 207 Wis.2d 240, 245, 558 N.W.2d 375, 377 (1997), the supreme court stated:

A postconviction motion for the withdrawal of a guilty plea is only granted when necessary to correct a manifest injustice. One type of manifest injustice is the failure to establish a sufficient factual basis that the defendant committed the offense to which he or she pleads. The circuit court's decision regarding the withdrawal of a guilty plea is discretionary and will not be upset on review unless there has been an erroneous exercise of discretion. Failure by the circuit court judge to ascertain that "the defendant in fact committed the crime charged" is an erroneous exercise of discretion. [The defendant] has the burden of showing by clear and convincing evidence that withdrawal of his [or her] plea is necessary to correct a manifest injustice.

(Citations omitted.) If the circuit court concludes that the evidence provided a sufficient factual basis to support the plea, we will not upset the finding unless it is clearly erroneous. See *Broadie v. State*, 68 Wis.2d 420, 423, 228 N.W.2d 687, 689 (1975). Furthermore, when the guilty plea is pursuant to a plea bargain, the court does not need to go the same length to determine whether the facts would sustain the charge as it would when there is no negotiated plea. *Id.* at 423-24, 228 N.W.2d at 689.

Faust pleaded guilty to contributing to the delinquency of a child, contrary to § 948.40(1), STATS. This section provides that "[n]o person may intentionally encourage or contribute to the delinquency of a child." The State argues that Faust's provision of alcohol to S.M.C. contributed to S.M.C. engaging in disorderly conduct, a delinquent act. Section 947.01, STATS., provides that whoever "engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty" of disorderly conduct.

The facts do not indicate that S.M.C. engaged in conduct that was violent, abusive, indecent, profane, boisterous or unreasonably loud. Therefore, we must determine whether her conduct was “otherwise disorderly.” “When the statute, after the specific enumerations, in a ‘catchall’ clause proscribes ‘otherwise disorderly conduct’ which tends to ‘provoke a disturbance,’ this must mean conduct of a type not previously enumerated but similar thereto in having a tendency to disrupt good order and to provoke a disturbance.” *State v. Givens*, 28 Wis.2d 109, 115, 135 N.W.2d 780, 783-84 (1965).

The complaint alleged that S.M.C. appeared very intoxicated, told her mother that she would not accompany her home and became uncooperative. It would be reasonable to conclude that a drunken teenage daughter’s uncooperative and insubordinate conduct toward her mother would tend to provoke a disturbance. In fact, the complaint provides that the daughter’s behavior did cause a disturbance. Therefore, the trial court’s conclusion that S.M.C. engaged in disorderly conduct is not clearly erroneous.

In addition, it would be reasonable to conclude that S.M.C. would be more uncooperative and insubordinate with her mother when intoxicated than when sober. A mother would also more likely be disturbed when confronted by a drunken thirteen-year-old daughter than by a sober one. Therefore, Faust’s provision of alcohol to S.M.C. probably encouraged or contributed to S.M.C.’s delinquent conduct. The trial court’s conclusion that Faust’s conduct resulted in S.M.C. acting disorderly is not clearly erroneous.

Faust has failed to meet her burden of showing by clear and convincing evidence that withdrawal of her plea is necessary to correct a manifest injustice. Therefore, the circuit court did not erroneously exercise its discretion in denying her motion to withdraw her guilty plea.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports. *See* Rule 809.23(1)(b)4, STATS.

