COURT OF APPEALS
DECISION
DATED AND FILED

April 18, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP3111-CR **Cir. Ct. No. 2005CM2562**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL TERELL TATUM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS R. CIMPL, Judge. *Affirmed.*

¶1 FINE, J. Paul Terell Tatum appeals from a judgment entered on his guilty plea to theft. *See* WIS. STAT. § 943.20(1)(a). He contends that his plea was invalid because it lacked a factual basis in the Record.[1] We disagree and affirm.[2]

I.

¶2 Tatum was charged with taking money that was in an envelope that had been left on a convenience-store counter by a customer. The complaint recited that a person saw Tatum take the envelope, and, also, that a surveillance video showed him taking it. At the plea hearing, the trial court questioned Tatum after Tatum said that he was pleading guilty:

> THE COURT: Okay. And you are pleading guilty to that offense because you did commit that offense; is that correct?
>
> [Tatum's lawyer]: Can I have one second, Your Honor?
>
> THE COURT: Sure.
>
> [The transcript indicates that Tatum and his lawyer spoke off-the-record.]
>
> [Tatum's lawyer]: Thank you, Your Honor.
>
> THE COURT: Okay. And I said you entered -- you entered a plea of guilty here. You told me that you're pleading guilty?
>
> THE DEFENDANT: Yes.

[1] Although Tatum's notice of appeal mentions the trial court's order denying his motion for postconviction relief, the notice of appeal indicates that he appeals from only the judgment of conviction.

[2] Tatum's plea was accepted by the Honorable Lee Wells. The Honorable Dennis R. Cimpl entered the judgment of conviction and the Honorable Bonnie L. Gordon denied Tatum's postconviction motion seeking to withdraw his plea.

The trial court then asked the prosecutor, Tatum's lawyer, and Tatum whether they would stipulate to the assertions in the complaint, other than, apparently, a wrong date, as a factual basis for Tatum's guilty plea. All, including Tatum, said that they would. The trial court then accepted Tatum's plea and found him guilty.

¶3 During the sentencing part of the proceedings, right after Tatum pled guilty and acknowledged that he was guilty, Tatum backtracked and indicated that he did not take the money:

> I didn't see no envelope to be honest with you. I was telling me -- my attorney that maybe the clerk take it [*sic*], whatever. You know, I mean -- I mean, I came back to-- I was going to work, so I got change for a dollar. And [the victim]-- You know, [the victim] was leaving, and she walked out. I didn't see no envelope, you know. But I told-- I told my attorney, I didn't take it.
>
> You know, I accept the charge. But I really [*sic*] sure, you know, I didn't take it. I'm not going to jury trial, but I told him I accept this charge and, you know, restitution.

The trial court then asked Tatum's lawyer whether he had looked at the surveillance tape mentioned in the criminal complaint, and whether the tape "did significantly show your client as being the one who took the money in question." Tatum's lawyer replied that it did.

II.

¶4 A court may not accept a guilty plea from a defendant unless there is a factual basis for the plea. ***State v. Thomas***, 2000 WI 13, ¶14, 232 Wis. 2d 714, 725, 605 N.W.2d 836, 842. When a defendant seeks to withdraw a guilty plea after he or she has been sentenced, the defendant must show that withdrawal of the plea is necessary "to correct a 'manifest injustice.'" ***Id.***, 2000 WI 13, ¶16, 232 Wis. 2d at 726, 605 N.W.2d at 843 (quoted source omitted). This requires that a

defendant "show 'a serious flaw in the fundamental integrity of the plea.'" ***Ibid.*** (quoted source omitted). ***Thomas*** established the test:

> We hold that a defendant does not need to admit to the factual basis in his or her own words; the defense counsel's statements suffice. We also hold that a court may look at the totality of the circumstances when reviewing a defendant's motion to withdraw a guilty plea to determine whether a defendant has agreed to the factual basis underlying the guilty plea. The totality of the circumstances includes the plea hearing record, the sentencing hearing record, as well the defense counsel's statements concerning the factual basis presented by the state, among other portions of the record.

Id., 2000 WI 13, ¶18, 232 Wis. 2d at 727–728, 605 N.W.2d at 843 (footnote omitted). This test is clearly satisfied here. The defendant's later denial, during sentencing, does not negate his earlier admissions and his and his lawyer's stipulation to the material assertions in the complaint. Indeed, Tatum's sentencing-hearing denial was coupled with his declaration that "I accept the charge." At the very least, therefore, the totality of his comments satisfy what ***State v. Garcia***, 192 Wis. 2d 845, 532 N.W.2d 111 (1995), held to be permissible in Wisconsin—acceptance of conviction while asserting innocence. As can be seen in Part I of this opinion, there is the requisite "strong proof of guilt" despite Tatum's sentencing-hearing denial. *See* ***id.***, 192 Wis. 2d at 859–860, 532 N.W.2d at 116–117. Accordingly, we affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.