COURT OF APPEALS DECISION DATED AND FILED

April 13, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2004AP2649-CR

Cir. Ct. No. 2002CF162

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN D. TIGGS, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Grant County: GEORGE S. CURRY, Judge. *Affirmed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. John Tiggs appeals from a judgment of conviction and an order denying his postconviction motion. We affirm.

¶2 After entering a plea of no contest, Tiggs was convicted of one count of battery by a prisoner. He first argues that the circuit court lacked subject matter jurisdiction or competence to proceed because the summons and complaint were not properly served on him. Tiggs relies on WIS. STAT. § 302.025 (2003-04).[1] In his brief he cites it as § 302.02(5), which was the correct citation for the statute before it was renumbered and amended effective May 25, 2002. *See* 2001 Wis. Act 103, § 262. That effective date was well before the date the State filed the summons and complaint in this case, and therefore § 302.025 is the proper version to use in this case. Tiggs' argument is that § 302.025 allows service to be made by a warden or other prison employee only in those institutions that are a "prison under s. 302.01," in the words of the statute, and that the institution he was in at the time was not such a prison.

¶3 The State argues that Tiggs waived this argument by concession of his counsel. We agree. At the arraignment, Tiggs personally attempted to object to the manner of service, but his attorney said that "under 302.025, he doesn't have an objection to that." We also reject the argument on the merits. The argument is that the Wisconsin Secure Program Facility (WSPF) institution is not specifically listed in WIS. STAT. § 302.01. However, § 302.01(1)(d) states that the definition of "prison" also includes those facilities authorized under certain other statutes, which are the statutes that authorized the WSPF.

¶4 Tiggs next argues that the circuit court was impermissibly involved in plea bargaining. Tiggs' argument focuses on a statement made by the circuit

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

court at a status hearing where Tiggs sought new counsel. The court stated that the status date was supposed to be the last day for plea bargains to be reached, and therefore the court would not allow further plea bargaining if Tiggs obtained new counsel. However, the court retracted that statement at a later hearing and did permit entry of Tiggs' plea pursuant to a plea agreement. We are unable to see from these facts any sense in which the court was involved in the plea negotiation.

¶5 Tiggs argues that he should be allowed to withdraw his plea for several reasons. The first is that his plea was not entered knowingly, voluntarily, and intelligently because he was not properly informed, by either the circuit court or his counsel, of the difference between a regular no-contest plea and an ***Alford*** plea. Tiggs asserts in his brief that if he had understood that he was not entering an ***Alford*** plea, but only a regular one, he would not have taken the plea agreement and would have taken the case to trial. Regardless of what information was given to Tiggs, there is no evidence in the record that this distinction would have caused him to reject the plea offer. A postconviction evidentiary hearing was held, at which Tiggs represented himself, but did not testify. He cites nothing in the record that would support a finding that he would have rejected the plea. In fact, the sentencing transcript appears to show that when this distinction was brought up and discussed, Tiggs agreed to proceed even with the understanding that his plea was not an ***Alford*** plea.

¶6 Tiggs argues that his plea should be vacated because it lacks a factual basis. Specifically, he argues that the plea lacked a factual basis because the victim's medical records that Tiggs later obtained show that the victim gave false testimony at the preliminary hearing, and demonstrate that no battery occurred.

¶7 A circuit court is required, at the time of accepting a no-contest plea, to "[m]ake such inquiry as satisfies it that the defendant in fact committed the crime charged." WIS. STAT. § 971.08(1)(b). However, Tiggs' argument is not that the court failed to make such an inquiry at the time of the plea, or that the record as it existed at that time was insufficient to find a factual basis. Instead, Tiggs' argument is that there was other evidence, not in the record, that would undercut the evidence present in the record at the time of the plea. This is not an argument that the court failed to comply with § 971.08, but is instead one directed at the sufficiency of the evidence to support a finding of guilt. However, that issue was waived by the plea. A defendant evidences his or her own satisfaction that there is a factual basis by entering a plea and thereby waiving his or her right to a jury trial. ***State v. Black***, 2001 WI 31, ¶12, 242 Wis. 2d 126, 624 N.W.2d 363.

> [A] factual basis for a plea exists if an inculpatory inference can be drawn from the complaint or facts admitted to by the defendant even though it may conflict with an exculpatory inference elsewhere in the record and the defendant later maintains that the exculpatory inference is the correct one. This is the essence of what a defendant waives when he or she enters a guilty or no contest plea.

Id., ¶16 (citations omitted). Accordingly, we conclude that this argument is not grounds to vacate Tiggs' plea.

¶8 Tiggs argues that his plea should be vacated because he received ineffective assistance of counsel in several ways. His brief does not address these issues in sufficient detail to allow us to obtain a meaningful understanding of what occurred in the trial court on these issues or why Tiggs believes the decision was legally in error. We decline to address issues that are inadequately briefed. ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

¶9 Tiggs argues that he was subjected to selective and discriminatory prosecution. The general rule is that a guilty or no-contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations occurring prior to the plea. ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. We conclude this issue was waived by Tiggs' plea.

¶10 Finally, Tiggs argues that the court erred in ordering restitution. He argues that it was improper for the court to order him to pay restitution in both the prison discipline proceeding and this criminal case. However, as the trial court made clear, Tiggs will not be paying twice for the same expenses. That is not the effect of imposing the same restitution obligation in both contexts.

¶11 To the extent Tiggs makes other arguments, we have considered them and rejected them.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.