COURT OF APPEALS
DECISION
DATED AND FILED

April 20, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1101-CR **Cir. Ct. No. 2003CF51**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN W. TALBOT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Wood County: JAMES M. MASON, Judge. *Affirmed*.

Before Lundsten, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. John Talbot appeals a judgment of conviction and an order denying postconviction relief. The issue is whether a circuit court taking a guilty or no-contest plea is required to inquire personally of the defendant as to

his or her understanding of the plea agreement. We conclude that such a requirement does not exist. We affirm.

¶2 Talbot pled no contest to a felony. This appeal concerns his attempt to withdraw his plea on the ground that he did not understand the sentencing recommendation that was part of the agreement. His argument relies on the burden-shifting procedure created in ***State v. Bangert***, 131 Wis. 2d 246, 274-75, 389 N.W.2d 12 (1986). Under that procedure, if the circuit court fails to perform a required duty for the proper taking of a plea, the burden shifts to the State to prove that the defendant actually understood the information that was not properly provided at the plea hearing. ***Id.***

¶3 Talbot argues that one of the required duties is that the court ascertain the defendant's understanding of the plea agreement, either by asking the defendant if he understands the agreement as stated in court by others or by asking the defendant to explain his own understanding of it. Talbot purports to find such a requirement in existing case law. We do not read the case law in that manner. No such requirement appears in ***Bangert*** itself. As pertinent here, ***Bangert*** requires only that the court "ascertain whether any promises or threats have been made to [the defendant] in connection with" the proposed plea of guilty. ***Id.*** at 262.

¶4 Talbot relies on statements in a 1971 concurrence to the effect that a trial court should ascertain the defendant's notion of any promise, and should require the defendant to state in his or her own words what he or she understands the bargain to be. *See* ***Farrar v. State***, 52 Wis. 2d 651, 662-64, 191 N.W.2d 214 (1971) (Hallows, C.J., and Wilkie, J., concurring). Talbot argues that this concurrence was "approved" by the Wisconsin Supreme Court when it cited the concurrence as authority in ***State ex rel. White v. Gray***, 57 Wis. 2d 17, 23 n.4,

203 N.W.2d 638 (1973). However, an examination of ***White*** does not support this argument. The court there was citing the ***Farrar*** concurrence only for the proposition that a plea agreement should always be made a matter of record. ***White***, 57 Wis. 2d at 23. The ***White*** court's reliance on the concurrence for one reason does not show approval of other statements made in the concurrence.

¶5 Accordingly, Talbot has not shown that the circuit court failed to comply with a required duty during the plea colloquy. The circuit court thus properly declined to apply the ***Bangert*** burden-shifting procedure, and properly placed the burden on Talbot.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2003-04).