COURT OF APPEALS
DECISION
DATED AND FILED

January 30, 2007

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2004AP3353-CR **Cir. Ct. No. 2002CF4241**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THADDEUS R. MCFARLAND,

DEFENDANT-APPELLANT.

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

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Pursuant to a plea bargain, Thaddeus McFarland pled guilty to false imprisonment, substantial battery, and seven counts of intimidating a witness. After sentencing, he moved to withdraw his plea, contending that he did not knowingly, intelligently, and voluntarily enter his plea

because he did not understand the elements of the crimes, nor did he understand the full range of punishment that could be imposed upon him. He also argued that he did not understand that he would be required to serve each day of his term of initial confinement without the possibility of parole or good time credit. The circuit court denied the motion and McFarland appeals. We affirm.

¶2 McFarland was charged with beating his former live-in girlfriend, Linda Harris. Harris told police that McFarland came to her home and forced her into an attic area. There, McFarland secured the door with a coat hanger and a piece of rope and then started beating Harris. According to Harris, she asked McFarland to let her go, but he told her that she could not leave until the swelling on her face from the beating went away. McFarland kept Harris in the attic overnight until he let her go the following morning. Harris went to the hospital for treatment of contusions on her head, face, and neck.

¶3 McFarland was charged and the case proceeded to trial. Harris did not appear on the day of trial, however, and police were informed that McFarland had been writing letters to Harris urging her not to appear at trial and testify against him. Police eventually procured several letters McFarland wrote to Harris while the case was pending. The trial was adjourned. After wavering a number of times whether to plead guilty pursuant to a bargain offered by the State, McFarland eventually entered a guilty plea.

¶4 After McFarland was sentenced, he filed a postconviction motion challenging the validity of his plea. He maintained that he had not entered his plea knowingly, intelligently, and voluntarily because: (1) he had not understood the elements of the offenses; (2) he had not understood the full range of potential punishment; and (3) he had not understood that he would have to serve every day

of the initial confinement imposed without the possibility of parole or good time. The circuit court denied each of McFarland's contentions, reasoning first that the record demonstrated that McFarland had been properly questioned about his understanding of the elements of the charges against him and that he had indicated his understanding. The court also reasoned that the actual amount of initial confinement a defendant must serve is not known at the time of sentencing because it may be affected by a defendant's post-sentencing acts. The circuit court held that because a defendant's actual confinement time may be affected by factors or consequences that are collateral to the plea itself, it was not required to inform McFarland that there was no possibility of parole or good time credit. *See* ***State v. Byrge***, 2000 WI 101, ¶60, 237 Wis. 2d 197, 614 N.W.2d 477. Finally, the court noted that it had informed McFarland of the potential punishment for each offense. On appeal, McFarland renews each of his postconviction arguments for plea-withdrawal.

¶5 The standards we apply here are well-settled. A circuit court's denial of a motion to withdraw a plea is reviewed under the erroneous exercise of discretion standard. ***State v. Black***, 2001 WI 31, ¶9, 242 Wis. 2d 126, 624 N.W.2d 363. A defendant must establish a manifest injustice supporting plea withdrawal and does so by showing that he or she did not knowingly, intelligently and voluntarily enter the plea. ***State v. Brown***, 2006 WI 100, ¶18, ___ Wis. 2d ___, 716 N.W.2d 906. Because a plea that is not entered knowingly, intelligently, and voluntarily violates due process, the determination of whether a plea is voluntarily made presents a question of constitutional fact. ***Id.***, ¶19. We accept the trial court's findings of historical and evidentiary facts unless they are clearly erroneous, but we determine *de novo* whether those facts demonstrate a knowing, intelligent and voluntary plea. ***Id***.

¶6 As noted, McFarland contends that his plea was not properly entered because the circuit court did not inform him of the elements of his crimes. The record shows that McFarland signed and submitted a guilty-plea questionnaire and waiver of rights form by which he acknowledged that he understood the elements of the charges against him. At the plea hearing, the circuit court delineated each charge and asked McFarland if he understood "all the charges against" him. The circuit court then asked defense counsel if he had explained the elements of each offense to McFarland, and counsel stated that he had. The circuit court again asked McFarland if he understood the elements of each offense, and McFarland indicated that he did. Finally, the court asked McFarland whether there was anything he did not understand about his guilty plea. McFarland stated, "No."

¶7 While the circuit court's plea colloquy with McFarland is not perfect, it is certainly adequate for this court to conclude that McFarland understood the charges against him, and therefore his claim that he did not knowingly, intelligently, and voluntarily enter his plea on this basis is meritless.

¶8 We turn next to McFarland's claims that the plea colloquy was defective because he had not understood the potential punishment and that there was no possibility of parole or good time credit during the period of initial confinement and the circuit court did not inform him of that fact. In support of this claim, McFarland relies on ***Byrge***. In ***Byrge***, the supreme court noted that a defendant does not understand the potential punishment resulting from a guilty plea if he or she is not informed of the direct consequences of the plea. ***Id.***, 237 Wis. 2d 197 at ¶60. McFarland contends that the lack of parole and good-time credit are direct consequences of the plea and, therefore, the circuit court was required to inform him of those consequences. We disagree.

¶9 The supreme court in ***Byrge*** established that the circuit court's authority under pre-truth-in-sentencing procedures to establish a parole eligibility date "was a direct consequence of the plea, because '[p]arole eligibility … implicates punishment." ***State v. Plank***, 2005 WI App 109, ¶14, 282 Wis. 2d 522, 699 N.W.2d 235, *review denied*, 2005 WI 136, 285 Wis. 2d 630, 703 N.W.2d 379 (citation omitted). The authority to establish a parole eligibility date affected the range of punishment because it could lead to increasing the maximum penalty. ***Id.***, at ¶16. Under truth-in-sentencing, however, the "lack of parole … does not mean [a defendant] will serve more time than the maximum penalty of which the court informed him. Thus, truth-in-sentencing does not affect [the] range of punishment." ***Id.*** The court continued:

> Finally, [the defendant] is not "ineligible" for parole or good-time – there simply is no parole or good-time under truth-in-sentencing. Wisconsin eliminated parole and good-time credit when it adopted its new sentencing scheme. At most, [the defendant's] complaint is that he misunderstood the law concerning a collateral consequence of his plea. However, a misunderstanding of a collateral consequence is not a basis for plea withdrawal when, as here, [the defendant's] misunderstanding was "the product of his own mind and entirely unexpressed in the plea bargaining process."

Id., at ¶17 (footnote and citation omitted).

¶10 ***Plank*** is dispositive on this issue. Lack of good time or parole eligibility is a collateral consequence of McFarland's plea. The circuit court was not required to inform McFarland of this collateral consequence, and it did not mislead McFarland about the direct or collateral consequences of the plea. To the extent McFarland believed that he might be eligible for parole or good-time credit, that belief was "the product of his own mind and entirely unexpressed in the plea bargaining process." ***Id.*** (citation omitted).

By the Court.—Judgment and order affirmed.

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