COURT OF APPEALS
DECISION
DATED AND FILED

July 24, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2005AP1207-CR **Cir. Ct. No. 2003CF4893**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SARIANNE MINETTE RODRIGUEZ,

DEFENDANT-APPELLANT.

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

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Sarianne Rodriguez appeals from a judgment of conviction for armed robbery with use of force and first-degree recklessly endangering safety, both as a party to a crime, and from an order denying her request for postconviction relief. On appeal, Rodriguez argues that she should

have been allowed to plead guilty to armed robbery and then proceed to trial on the reckless endangerment charge. We disagree with Rodriguez and affirm the judgment and postconviction order.

¶2 It is undisputed that Rodriguez participated in the robbery of a seventy-year-old man who was carrying a money box from a Milwaukee store. Initially, Rodriguez confessed to committing the crime with Nelida Santana. She told police that she and Santana had driven to the store, where she expected to see an older white male with a box containing money. Rodriguez told police that she and Santana intended to rob the man. Rodriguez claimed that she confronted the man and demanded the box, but when the man hesitated and began backing away from her, she pointed her pistol at the man and shot him in the leg. She then grabbed the box, got into her vehicle with Santana, and left the scene.

¶3 Rodriguez subsequently recanted her confession to having shot the victim, although she admitted to having participated in the robbery. The State amended the complaint against Rodriguez to include party-to-a-crime liability on both charges. Rodriguez then agreed to a plea bargain. At the plea hearing, she attempted to enter no contest pleas, but the prosecution objected and the circuit court rejected that attempt. Rodriguez ultimately entered guilty pleas to both charges.

¶4 In her postconviction motion for plea withdrawal, Rodriguez claimed that, based upon the advice of counsel and statements by the court at the plea hearing, she believed that her only two options were to proceed to trial on both counts or to plead guilty to both counts. She stated that "she did not know and did not believe that one option open to her was to plead guilty to the armed robbery as charged and insist upon a trial of the [r]eckless [e]ndangerment count."

Rodriguez maintained that had she known of that option, she would have taken it because she had not shot the victim.

¶5 The circuit court denied the motion, noting first that Rodriguez had signed a plea questionnaire and waiver-of-rights form indicating that she wished to plead guilty to both offenses. It noted that it had conducted an appropriate plea colloquy with Rodriguez and that Rodriguez specifically stated that she was pleading guilty on both charges as a party to a crime. The circuit court noted that it found Rodriguez's representations at the plea hearing to have been "freely and voluntarily made."

¶6 Even more significantly, the circuit court noted that even if Rodriguez had attempted to enter a guilty plea on the armed robbery and proceed to a jury trial on the reckless endangerment charge, it would have rejected that attempt. It noted that it had discretion as to whether to accept a plea, and that in this instance, the two charges arose out of the same "transaction" and were so intertwined, that "the State's ability to prove that she directly committed both of these offenses would have been prejudiced" if Rodriguez had been allowed to "split" her pleas to the charges. Rodriguez appeals, arguing that her plea on the reckless endangerment charge was not knowing, intelligent, or voluntary.

¶7 On a post-sentence motion to withdraw a guilty plea, a reviewing court uses a two-part test with a mixed standard of appellate review: "If the motion on its face alleges facts which would entitle the defendant to relief, the circuit court has no discretion and must hold an evidentiary hearing. Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law that we review de novo." ***State v. Bentley***, 201 Wis. 2d 303, 310, 548 N.W.2d 50 (1996) (citations omitted). A defendant is not entitled to an

evidentiary hearing or relief if the defendant's postconviction motion does not raise facts sufficient to entitle the defendant to relief, if the record conclusively demonstrates that the defendant is not entitled to relief, or if the motion contains only conclusory allegations. ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 682 N.W.2d 433. In instances where a defendant is arguing, at least in part, that counsel's ineffectiveness led to entry of the invalid plea, "the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." ***Hill v. Lockhart***, 474 U.S. 52, 59 (1985); *see also* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984) (to succeed on claim of ineffective assistance by counsel, defendant must show both deficient performance by counsel and prejudice resulting from that deficient performance). Even if the defendant alleges that he or she would have gone to trial, if the defendant fails to allege sufficient factual assertions to allow a reviewing court to meaningfully assess the claim that the defendant was prejudiced by the misinformation, the motion must fail. *See* ***Bentley***, 201 Wis. 2d at 316-17.

¶8 As the State recognizes, Rodriguez's postconviction argument—that, had she known of her "right" to enter a guilty plea only to the robbery, she would have exercised that "right"—is fundamentally flawed. In deciding the motion, the circuit court stated that, if Rodriguez had wished to enter a guilty plea on one charge and go to trial on the other, it would not have allowed it. *See* ***State v. Roubik***, 137 Wis. 2d 301, 305-07, 404 N.W.2d 105 (Ct. App. 1987) (trial court has inherent authority to reject guilty plea offered pursuant to a plea bargain). In its postconviction order, the circuit court noted that the two charges arose from the same criminal transaction and that, if it had allowed the "split plea" Rodriguez claimed was her right, "the State's ability to prove that she directly committed

both of these offenses would have been prejudiced." As the State notes succinctly, Rodriguez's "guilty plea to the reckless endangerment charge was not rendered invalid based on her claimed lack of knowledge about an option that she had no absolute, unilateral right to exercise."

¶9 This leads to the second flaw in Rodriguez's argument: the postconviction motion was insufficient to establish that she was entitled to relief. Rodriguez conceded her participation in the robbery and shooting as a party to a crime even after recanting her confession to direct responsibility for the shooting. In her motion, Rodriguez indicated that she desired a jury trial so that she could demonstrate that she was not the actual shooter. As the State points out, however, that claim is not a legal defense to the charge of reckless endangerment as a party to a crime, which Rodriguez concedes to be a viable charge against her. Consequently, even if the court assumed that her trial counsel's performance was deficient for not informing her of the "split plea" option, Rodriguez has not demonstrated prejudice resulting from that deficient performance.

By the Court.— Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2005-06).