COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP2034-CR **Cir. Ct. No. 2003CF2408**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

QUINCY LEE GRANT,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: VICTOR A. MANIAN AND JEFFREY A. KREMERS, Judges. *Affirmed.*

Before Wedemeyer, Fine and Kessler, JJ.

¶1 PER CURIAM. Quincy Lee Grant appeals from a judgment of conviction[1] and a postconviction order. He sought to withdraw his guilty pleas to two counts of first-degree recklessly endangering safety while threatening to use a dangerous weapon. *See* WIS. STAT. §§ 941.30(1), 939.63 (2003-04).[2] He claimed that his pleas were not entered knowingly, voluntarily and intelligently because the circuit court did not advise him that a dangerous weapon penalty enhancer may extend only the confinement portion of a bifurcated sentence. We conclude that this case is controlled by ***State v. Sutton***, 2006 WI App 118, 294 Wis. 2d 330, 718 N.W.2d 146. We therefore reject his arguments and affirm.

Background

¶2 Grant entered pleas on October 20, 2003 to two counts of recklessly endangering safety while threatening to use a dangerous weapon and two additional felony counts not at issue in this appeal.[3] WIS. STAT. §§ 941.30(1), 939.63. First-degree reckless endangerment carries a maximum sentence of twelve years and six months. WIS. STAT. §§ 939.50(3)(f), 941.30(1). The penalty enhancer of threatening to use a dangerous weapon exposed Grant to an additional five years of imprisonment on each count. *See* WIS. STAT. § 939.63(1)(b).

[1] The original judgment of conviction dated February 5, 2004 erroneously recited the offenses to which Grant pled guilty. The circuit court issued a corrected judgment of conviction dated June 5, 2004.

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

[3] In addition to reckless endangerment, Grant also entered pleas to one count of failure to comply with officers' lawful orders and one count of being a felon in possession of a firearm. *See* WIS. STAT. §§ 946.415(2), 941.29(2).

¶3 During the plea colloquy, the circuit court correctly informed Grant that he faced maximum imprisonment of seventeen years and six months on each count of first-degree reckless endangerment. Grant stated that he understood. Subsequently, the court imposed consecutive sentences of seventeen years and six months for each reckless endangerment conviction, with ten years as initial confinement and seven-and-one-half years as extended supervision.

¶4 Grant moved for postconviction relief. He asserted that the circuit court failed to advise him that a penalty enhancer could be applied to extend only the confinement component of his sentence. He claimed a resulting manifest injustice requiring plea withdrawal.[4] The circuit court denied the motion, holding that it had no obligation to advise Grant of the maximum term of initial confinement pursuant to ***Sutton***, 294 Wis. 2d 330, ¶15. This appeal followed.

Discussion

¶5 After sentencing, a defendant must establish by clear and convincing evidence that failure to allow plea withdrawal would result in a manifest injustice. ***State v. Trochinski***, 2002 WI 56, ¶15, 253 Wis. 2d 38, 644 N.W.2d 891. "A plea which is not knowingly, voluntarily or intelligently entered is a manifest injustice." ***Id.*** (citation omitted).

¶6 "The standard and procedure for determining whether a plea is knowing, intelligent and voluntary are laid out in § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986)." ***Trochinski***, 253 Wis. 2d 38, ¶17.

[4] Grant alternatively moved for sentence modification, asserting that the court imposed terms of extended supervision that illegally exceeded the statutory maximum. This motion was granted and is not at issue on appeal.

A defendant must: (1) make a *prima facie* showing of a violation of § 971.08(1) or another court-mandated duty; and (2) allege a lack of knowledge or understanding of information that should have been provided at the plea hearing. ***State v. Plank***, 2005 WI App 109, ¶6, 282 Wis. 2d 522, 699 N.W.2d 235. Whether Grant has established a *prima facie* case is a question of law that we review *de novo*. *See* ***id.***

¶7 At issue here is the circuit court's duty to ensure that a defendant understands the potential punishment faced upon conviction. *See* ***id.***, ¶9. Awareness of potential punishment generally means that defendants must be aware of the direct consequences of their pleas. ***Id.***, ¶13.

¶8 The direct consequence of a plea has "a 'definite, immediate, and largely automatic effect on the range of a defendant's punishment.'" ***Id.*** (citation omitted). The maximum term of imprisonment, not the component parts of the bifurcated sentence, constitutes the range of punishment and is the immediate consequence of the plea. *See* ***Sutton***, 294 Wis. 2d 330, ¶¶14-15.

¶9 Grant's complaint is that the circuit court did not tell him the law dictating how maximum initial confinement is calculated. The circuit court is not required to do so. The maximum available initial confinement is a collateral consequence that need not be explicitly reviewed during the plea. *See* ***Sutton***, 294 Wis. 2d 330, ¶¶13-15. The law governing calculation of that confinement is similarly information about collateral consequences that need not be discussed during the plea proceeding.

¶10 The record reflects that Grant was informed of the direct consequence of his plea. The circuit court correctly informed Grant of the maximum term of imprisonment he faced upon conviction of the offenses,

including those offenses coupled with penalty enhancers.[5] The court had no obligation to further dissect the potential punishment by advising Grant of the maximum term of confinement. ***Id.***, ¶15. Grant has shown no violation of ***Bangert*** or other statutory duty that undermines the voluntariness of his plea.

By the Court.—Judgment and order affirmed.

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

[5] Grant contends that the rules for applying penalty enhancers permit the circuit court to alter the range of a defendant's potential punishment in some cases. In support, he points to ***State v. Kleven***, 2005 WI App 66, 280 Wis. 2d 468, 696 N.W.2d 226. We do not discuss whether Grant has misread ***Kleven***, because Grant concedes that in his case the range of punishment was unaltered. This court will not decide issues based on hypothetical facts. *See* ***State v. Armstead***, 220 Wis. 2d 626, 628, 538 N.W.2d 444 (Ct. App. 1998).