COURT OF APPEALS
DECISION
DATED AND FILED

October 31, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1211-CR **Cir. Ct. No. 98-CM-1536**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MAURICE A. JONES,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for La Crosse County: RAMONA A. GONZALEZ, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Maurice A. Jones appeals an order of the circuit court denying his motion for postconviction relief.[2] Jones claims that his guilty plea was not given knowingly, voluntarily, and intelligently, and that his trial counsel provided ineffective assistance. We disagree with Jones's arguments and affirm.

Background

¶2 Jones was charged with criminal damage to property, two counts of disorderly conduct, battery, and resisting arrest. These charges stemmed from a domestic disturbance on October 15, 1998. Each charge contained a repeater allegation, as defined in WIS. STAT. § 939.62 (1995-96). Jones pled guilty to Counts 3 and 5 of the complaint: battery as a habitual criminal and resisting arrest as a habitual criminal. At the plea hearing, the trial court conducted a plea colloquy with Jones. The trial court confirmed that Jones went over the plea questionnaire and waiver of rights form with his attorney, that Jones had sufficient time to review the documents, that Jones had initialed the forms, and that Jones understood the documents. The trial court informed Jones of the elements of each crime to which he was pleading guilty, and informed Jones that the maximum penalty would be enhanced due to his habitual offender status:

> [THE COURT:] And you understand, sir, before you could be convicted, the State would have to prove by evidence beyond a reasonable doubt to a jury that you did in fact cause bodily harm to this woman, that you intended

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

[2] Jones also moved for sentence modification in a separate motion. He does not appeal the trial court's decision on that motion.

> to cause her bodily harm, that you did that bodily harm and that she did not consent to that bodily harm?
>
> Do you understand that?
>
> DEFENDANT: Yeah.
>
> THE COURT: That is a Class A misdemeanor, punishable by a fine of not more than Ten Thousand Dollars or imprisonment not more than nine months or both. But you are being charged as a repeater, and as such, the time of imprisonment may be increased to not more than three years.
>
> Now, you've got resisting?
>
> [Defense counsel]: It's also as a repeater. It just doesn't say it.

Jones then admitted to the factual basis underlying the charges and the repeater enhancer.

¶3 In sentencing Jones, the trial court withheld sentence and placed Jones on probation for two years on each count, to run concurrently. Jones's probation was revoked and, on August 23, 1999, the trial court sentenced Jones to two years in prison on each count, to run concurrently. Jones moved for postconviction relief. The trial court denied relief, finding that Jones's motion contained no arguable merit.

Discussion

¶4 A guilty plea that is not entered knowingly, voluntarily, and intelligently violates fundamental due process, and withdrawal of such a plea is a matter of right. *See* ***State v. Nichelson***, 220 Wis. 2d 214, 217, 582 N.W.2d 460 (Ct. App. 1998). Before accepting a plea of guilty or no contest, a trial court must determine whether the defendant understands the potential punishment upon conviction. ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986);

WIS. STAT. § 971.08(1)(a). If a guilty plea questionnaire and waiver of rights form are incorporated into the guilty plea proceedings, such documents may be considered in determining whether the defendant was fully advised of the nature of the charge against him. *See* ***State v. Moederndorfer***, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (such documents may be considered in determining whether the defendant was fully advised of the constitutional rights he was waiving).

¶5 Before defendants may be permitted to withdraw guilty pleas on the ground that they were not fully advised of the elements of the offense to which they pled, they must "make a prima facie showing that [the] plea was accepted without compliance with sec. 971.08, Stats., or other mandated procedures set out in the ***Bangert*** opinion," based upon the plea record. ***Id.*** at 830.

¶6 Jones first contends that his guilty plea was not entered knowingly, voluntarily, and intelligently because the trial court did not give him an opportunity to respond to whether he understood that his sentence for the battery charge would be enhanced based on his status as a repeater. The trial court incorporated the plea questionnaire into the plea colloquy, so we examine the plea questionnaire to determine whether Jones's plea was voluntary. The top of the first page of the plea questionnaire clearly indicates that the maximum sentence for each charge was three years, with a combined six-year maximum sentence. During the plea colloquy, Jones stated that he went over the plea questionnaire with his attorney. Jones stated that he had sufficient time in which to do so, and Jones initialed the plea questionnaire to indicate his understanding of its contents. When asked, Jones agreed that he understood the plea questionnaire. The trial court went on to inform Jones of the maximum penalty he faced on both charges, including the repeater enhancement. We conclude that the plea colloquy was

sufficient to inform Jones of the potential punishment he faced upon conviction. Therefore, Jones has failed to make his prima facie case.

¶7 Jones next asserts that he should be resentenced due to his trial counsel's ineffective assistance during the plea hearing. As best we can determine, Jones argues that because his attorney told the court during the plea colloquy that the resisting arrest charge was also subject to a repeater enhancer, his attorney provided proof of an element of that crime to the court. Jones alleges that "the burden of proof placed on the State was abandoned and shifted to the defendant when the court did not allow the defendant to respond to the repeater allegation." However, we fail to see how providing correct information to the court equals ineffective assistance of counsel. Jones admitted to the facts sustaining his status as a repeater. Jones does not argue that the resisting arrest charge was not subject to a repeater enhancement. Moreover, Jones does not explain how the burden of proof was shifted, nor does he support his contention with citation to legal authority on this point. We decline to address inadequately briefed issues. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

By the Court.—Order affirmed.

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