COURT OF APPEALS
DECISION
DATED AND FILED

December 7, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP2936 **Cir. Ct. No. 2007CF2749**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE LUIS ARANZAMENDI,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: JEFFREY A. CONEN, Judge. *Affirmed*.

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

¶1 PER CURIAM. Jose Luis Aranzamendi, *pro se*, appeals the order denying his motion for postconviction relief. He argues that: (1) his guilty plea was not knowingly, intelligently, and voluntarily entered into; (2) he was denied

the effective assistance of counsel; and (3) he was sentenced on the basis of inaccurate information. We disagree and affirm.

BACKGROUND

¶2 Aranzamendi was charged with one count of repeatedly sexually assaulting a child who had not reached the age of sixteen (fewer than three violations of first-degree sexual assault). He pled guilty and the court scheduled a sentencing hearing.

¶3 On the date set for sentencing, a Spanish interpreter appeared for the first time. Aranzamendi's attorney relayed that although Aranzamendi had "a basic understanding of the English language[,] … [h]e indicated … he would have preferred to have an interpreter when he gave his presentation." At the suggestion of the prosecutor, the court conducted a new plea colloquy with the interpreter's assistance. During the second plea colloquy, Aranzamendi acknowledged that he understood the proceedings at the time of his initial plea but claimed: "I always told my attorney that I needed an interpreter." With the interpreter's assistance, Aranzamendi nevertheless went on to plead guilty a second time. The court proceeded to sentence Aranzamendi to five years of initial confinement and five years of extended supervision. Aranzamendi appeared with counsel at all relevant proceedings through this point.

¶4 Aranzamendi subsequently filed a *pro se* motion for postconviction relief pursuant to WIS. STAT. § 974.06 alleging that his guilty plea was not knowingly, intelligently, and voluntarily entered into, that his attorney failed to advise him that he had a right to an interpreter during every phase of the legal proceedings, and that he was sentenced on the basis of inaccurate information. The court denied Aranzamendi's motion without a hearing. He now appeals.

ANALYSIS

¶5 We review whether Aranzamendi alleged sufficient material facts in his postconviction motion which, if true, would entitle him to relief. *See* ***State v. Allen***, 2004 WI 106, ¶9, 274 Wis. 2d 568, 576, 682 N.W.2d 433, 437. If the motion raises insufficient facts or only conclusory allegations, or if the Record demonstrates no entitlement to relief, the court may deny the motion without a hearing. ***Ibid.*** The decision to grant or deny a hearing in that case is discretionary. ***Ibid.*** We review such decisions with deference. ***Id.***, 2004 WI 106, ¶9, 274 Wis. 2d at 577, 682 N.W.2d 433, 437.

A. *Plea withdrawal.*

¶6 Aranzamendi argues that his guilty plea was not knowingly, intelligently, and voluntarily entered into. He bases his argument on the following: (1) at the plea hearing, he denied the allegation set forth in the complaint that he had mouth to vagina contact with the victim; (2) his confession was coerced because he was not afforded an interpreter at the time he was warned of his rights under ***Miranda*** and his false confession prompted his subsequent guilty plea; and (3) he was denied the effective assistance of counsel because an interpreter was not present until after the sentencing hearing.[1]

¶7 To withdraw a guilty plea after sentencing, a defendant "must prove, by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" ***State v. Brown***, 2006 WI 100, ¶18, 293 Wis. 2d 594, 611, 716 N.W.2d 906, 914 (citation omitted). A defendant can

[1] *See* ***Miranda v. Arizona***, 384 U.S. 436 (1966).

establish manifest injustice by proving ineffective assistance of counsel, ***State v. Bentley***, 201 Wis. 2d 303, 311, 548 N.W.2d 50, 54 (1996), or by showing that the plea was not entered knowingly, intelligently, and voluntarily, ***Brown***, 2006 WI 100, ¶18, 293 Wis. 2d at 611, 716 N.W.2d at 914. Aranzamendi fails in both regards.

¶8 First, Aranzamendi erroneously asserts that the circuit court was prohibited from accepting his plea because his denial of oral contact amounted to a denial of essential, crucial elements of the offense. As the State points out, mouth to vagina contact was only one type of sexual contact that Aranzamendi was alleged to have engaged in—penis to buttocks and finger to vagina contact was also alleged. Consequently, Aranzamendi's denial of oral contact was inconsequential in light of his acknowledgment of the other forms of sexual contact, which were sufficient to form the factual basis for his plea.[2]

¶9 Next, we agree with the postconviction court's assessment that although Aranzamendi states in conclusory fashion that he did not understand his ***Miranda*** rights when he waived them, the Record supports the opposite conclusion. The court noted that Detective Ortiz took Aranzamendi's statement and testified at the preliminary hearing that Aranzamendi had no problem

[2] To the extent Aranzamendi argues that the plea colloquy itself was insufficient because the circuit court failed to determine that he understood the oral contact aspect of the allegations against him, this argument is undeveloped. *See* ***League of Women Voters v. Madison Cmty. Found.***, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 140, 707 N.W.2d 285, 291 (we do not decide undeveloped arguments); ***Vesely v. Security First Nat'l Bank of Sheboygan Trust Dep't***, 128 Wis. 2d 246, 255 n.5, 381 N.W.2d 593, 598 n.5 (Ct. App. 1985) (we do not decide inadequately briefed arguments). We note, however, that Aranzamendi's express denial of this aspect of the allegations would seem to evidence his understanding.

understanding him in English.[3] The court also referenced statements made by Aranzamendi's counsel that Aranzamendi had been in the community almost twenty years and had learned the English language fairly well.

¶10 After reviewing the transcripts from the proceedings from the initial appearance through the initial plea hearing, the postconviction court found "there is no indication whatsoever that the defendant had any trouble understanding the proceedings." Our review of the Record confirms this finding. Although Aranzamendi submits that "[a]n interpreter was not provided to [him] until sentencing," the Record reveals that a second plea colloquy took place with the assistance of an interpreter on the date scheduled for Aranzamendi's sentencing hearing. Aranzamendi does not provide in his postconviction motion or appellate briefs any explanation as to why his confirmation of his understanding of the plea and its consequences was to be disbelieved or inadequate. In light of the foregoing, we see no basis on which to conclude that Aranzamendi's counsel was ineffective.

B. *Alleged reliance on inaccurate information.*

¶11 Aranzamendi again focuses on his denial of mouth to vagina contact with the victim; however, this time he does so to support the contention that he

[3] In his statement of the issues presented, Aranzamendi, in one sentence, asserts that a conflict of interest occurred at his preliminary hearing on the grounds that Detective Ortiz acted in a dual capacity as an agent of the State and as an interpreter for him. The Record belies Aranzamendi's claim. The postconviction court properly concluded: "Detective Ortiz was testifying in his capacity as an observer of [Aranzamendi] in the interview room and was entitled to comment on his conclusions regarding [Aranzamendi]'s ability to understand English during the interview process. He was not acting as an interpreter of [Aranzamendi] or for him."

was sentenced on the basis of inaccurate information and that this constitutes a new factor warranting sentence reduction. This argument fails.

¶12 A defendant claiming that a sentencing court relied on inaccurate information must show that: (1) the information was inaccurate; and (2) the sentencing court actually relied on the inaccurate information. ***State v. Tiepelman***, 2006 WI 66, ¶26, 291 Wis. 2d 179, 192–193, 717 N.W.2d 1, 7. We review *de novo* whether a defendant has been denied the right to be sentenced on accurate information. ***Id.***, 2006 WI 66, ¶9, 291 Wis. 2d at 185, 717 N.W.2d at 3.

¶13 Aranzamendi's denial of mouth to vagina contact with the victim was noted on the record during both the first and second plea hearings. Our review of the Record confirms the postconviction court's determination that "[a]ll parties duly noted [Aranzamendi]'s position and claim that he did not orally have contact with the victim's vagina, and [the sentencing court] did not rely on those facts when [it] sentenced [Aranzamendi]. The defendant was not sentenced on the basis of 'inaccurate information.'"[4] Accordingly, we hold that the postconviction court properly denied Aranzamendi's motion without a hearing.

[4] Aranzamendi appears to argue that the court's consideration of the alleged oral contact constitutes a new factor warranting a reduction in his sentence. We fail to see how this can constitute a new factor. *See* ***Rosado v. State***, 70 Wis. 2d 280, 288, 234 N.W.2d 69, 73 (1975) ("[T]he phrase 'new factor' refers to a fact or set of facts highly relevant to the imposition of sentence, but not known to the trial judge at the time of original sentencing."). To the extent that we have misconstrued Aranzamendi's new factor argument, we deem it undeveloped and do not consider it further. *See* ***League of Women Voters***, 2005 WI App 239, ¶19, 288 Wis. 2d at 140, 707 N.W.2d at 291; ***Vesely***, 128 Wis. 2d 246 at 255 n.5, 381 N.W.2d at 598 n.5.

By the Court.—Order affirmed.

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