

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 8, 2011

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2010AP1673-CR

Cir. Ct. No. 2009CF46

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ARTHUR J. ANDERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Forest County: THOMAS G. GROVER, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Arthur Anderson appeals a judgment of conviction for criminal damage to property and an order denying postconviction relief.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

Anderson asserts he should be permitted to withdraw his guilty plea because it lacked a factual basis. We affirm.

BACKGROUND

¶2 Heidi Smith lent her car to Anderson with the understanding that he would return it the following morning. When Anderson failed to return the vehicle, Smith reported the vehicle stolen. A couple days later, police found the vehicle abandoned and rolled over in a ditch. Police determined that the vehicle had hit a deer. The vehicle was totaled.

¶3 Anderson was charged with operating a motor vehicle without owner's consent and two counts of bail jumping. Pursuant to a plea agreement, the State amended the operating a motor vehicle without owner's consent charge to criminal damage to property and moved to dismiss one of the bail jumping charges. Anderson pled guilty. The circuit court, after reviewing the elements of criminal damage to property and bail jumping with Anderson and finding a factual basis in the criminal complaint, accepted his pleas.

¶4 After sentencing, Anderson filed a postconviction motion, asserting there was no factual basis upon which the circuit court could find he intentionally damaged property. The court denied Anderson's motion.

DISCUSSION

¶5 In order to withdraw a guilty plea after sentencing, Anderson must establish a manifest injustice. *See State v. Smith*, 202 Wis. 2d 21, 25, 549 N.W.2d 232 (1996). Manifest injustice occurs if the trial court fails “to establish a sufficient factual basis that the defendant committed the offense to which he or she pleads.” *Id.* However, when a guilty plea is entered pursuant to a plea agreement,

the circuit court is not required to go “to the same length to determine whether the facts would sustain the charge as it would where there is no negotiated plea.” *Broadie v. State*, 68 Wis. 2d 420, 423-24, 228 N.W.2d 687 (1975). On a motion to withdraw, the court may look at the totality of the circumstances, including the plea hearing, the sentencing hearing, and statements made by the defendant’s counsel, to determine whether a defendant has agreed to the factual basis underlying the guilty plea. *State v. Thomas*, 2000 WI 13, ¶18, 232 Wis. 2d 714, 605 N.W.2d 836. “The determination of the existence of a sufficient factual basis lies within the discretion of the trial court and will not be overturned unless it is clearly erroneous.” *Smith*, 202 Wis. 2d at 25.

¶6 To be found guilty of criminal damage to property, the State must prove beyond a reasonable doubt that:

1. The defendant caused damage to physical property.
2. The defendant intentionally caused the damage.
3. The property belonged to another person.
4. The defendant caused the damage without the consent of [the owner].
5. The defendant knew the property belonged to another person and knew that the other person did not consent to the damage.

WIS JI—CRIMINAL 1400 (2002); *see also* WIS. STAT. § 943.01. Anderson asserts that there was no factual basis to support a determination he intentionally damaged the vehicle. Specifically, he contends the police report, which was incorporated into the criminal complaint, refers to his vehicle as having been in an accident. Anderson argues an accident is not intentional.

¶7 However, the record supports the circuit court’s determination that Anderson intentionally damaged the property. During the plea colloquy, the circuit court explained to Anderson that an element of criminal damage to property is that the damage was intentional and not accidental. The court stated: “[T]he

District Attorney would have to prove beyond a reasonable doubt that ... you did intentionally, on purpose, not by accident, cause damage to somebody's property.” The court asked Anderson if he understood the charge and Anderson indicated he did. Anderson then pled guilty. Here, the intent element was shown through Anderson's voluntary guilty plea. *See N.N. v. Moraine Mut. Ins. Co.*, 153 Wis. 2d 84, 97, 450 N.W.2d 445 (1990) (holding intent to act is shown by a voluntary plea of guilty); *see also Thomas*, 232 Wis. 2d 714, ¶¶18, 20-21 (noting a court may look at statements made during the plea hearing to establish a factual basis). We conclude the record provides an adequate factual basis to support Anderson's conviction for criminal damage to property.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

