COURT OF APPEALS
DECISION
DATED AND FILED

March 2, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP884-CR **Cir. Ct. No. 2008CF128**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARTICE T. ROBINSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Racine County: FAYE M. FLANCHER, Judge. *Affirmed*.

Before Brown, C.J., Anderson and Reilly, JJ.

¶1 PER CURIAM. Matrice Robinson appeals from a judgment of conviction for unauthorized use of an individual's personal indentifying

information or documents, WIS. STAT. § 943.201(2) (2009-10), and the order denying his motion for postconviction relief.[1] Robinson argues that the plea colloquy the circuit court conducted with him was defective and he should be allowed to withdraw his plea. We conclude that even if the plea colloquy may not have been adequate, the state established at an evidentiary hearing that Robinson entered his plea knowingly, intelligently, and voluntarily. Consequently, Robinson is not entitled to withdraw his plea and we affirm the judgment and order of the circuit court.

¶2 Robinson was charged in a criminal complaint with having applied for and used a credit card in another person's name without that person's permission. Pursuant to a plea agreement, he entered a plea of no contest to the one felony count. Prior to sentencing, Robinson moved to withdraw his plea alleging that he did not enter his plea knowingly, intelligently, and voluntarily because his counsel did not adequately explain to him the constitutional rights he was waiving by entering the plea. The circuit court held a hearing on the motion and denied it. The court found that Robinson had received all the necessary advisements, understood his rights, and therefore had not offered a fair and just reason for withdrawing his plea. In other words, Robinson knowingly, intelligently, and voluntarily entered his plea.

¶3 After sentencing, postconviction counsel filed a motion to withdraw the plea arguing that the plea colloquy was defective because the court failed to

[1] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

establish a factual basis for the plea. The circuit court also denied this motion stating that the court had previously heard and denied such a motion and there were no new facts alleged that warranted another hearing.

¶4 Robinson argues on appeal that he should be allowed to withdraw his plea because the circuit court failed to establish a factual basis for the charge during the plea colloquy. Robinson states that the circuit court did not ask him if he committed the charged offense or if he would stipulate that the court could use the complaint as a factual basis for the plea. Robinson further argues that he did not understand that the no contest plea required an admission that he committed the offense contained in the criminal complaint.

¶5 The record of the plea hearing shows that the circuit court asked Robinson, among other things, if he understood the elements of the crime to which he was entering his plea, and Robinson responded that he did. The court also asked if he had received a copy of the criminal complaint and reviewed that complaint with his attorney. Robinson again answered "yes." The court asked him if he understood that by pleading no contest, he was not contesting the State's ability to prove the facts necessary to constitute the crime charged. He responded "correct." The court later stated, without inquiring of Robinson or his counsel whether they agreed, that "there are facts sufficient in the criminal complaint to support a no contest plea." Robinson argues that because the court failed to ask for Robinson's agreement about the factual basis for the plea, the plea colloquy was defective, his plea consequently was not knowingly, intelligently, and voluntarily entered, and he should be allowed to withdraw his plea.

¶6 The failure of the circuit court to establish the factual basis for a plea entitles the defendant to a hearing under ***State v. Bangert***, 131 Wis. 2d 246,

261-72, 389 N.W.2d 12 (1986). *See* ***State v. Howell***, 2007 WI 75, ¶58, 301 Wis. 2d 350, 734 N.W.2d 48. At the ***Bangert*** hearing, the court determines whether the defendant entered the plea knowingly, intelligently, and voluntarily despite the court's failure to establish the factual basis. ***Howell***, 301 Wis. 2d 350, ¶58. We will not decide whether the plea colloquy was defective.

¶7 We need not decide whether the plea colloquy was actually defective because when Robinson moved to withdraw his plea before sentencing, the circuit court held a hearing to determine whether he knowingly, intelligently, and voluntarily entered the plea. Even assuming that the colloquy was defective, the circuit court already decided that Robinson entered the plea knowingly, intelligently, and voluntarily. Robinson is not entitled to another hearing on this question. Robinson has already received the relief to which he would be entitled.[2]

By the Court.—Judgment and order affirmed.

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

[2] We note, however, that perhaps it would have been better had the circuit court asked Robinson if he agreed or stipulated that the State could prove the specific facts that constituted the crime charged and whether he agreed that the complaint provided a factual basis for the plea.