COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2086 **Cir. Ct. No. 2002CF73**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIAL L. KLETTKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waushara County: LEWIS R. MURACH and WILLIAM M. McMONIGAL, Judges. *Affirmed*.

Before Higginbotham, Sherman and Blanchard, JJ.

¶1 PER CURIAM. Danial Klettke appeals a judgment convicting him of one count of first-degree sexual assault of a child and one count of child enticement, as well as an order denying his motion for postconviction relief. He

raises a number of issues related to jurisdiction, plea withdrawal, and the assistance of counsel. We affirm for the reasons discussed below.

BACKGROUND

¶2 The complaint was based upon allegations that Klettke had fondled his girlfriend's two preadolescent sons in the family's home sometime around Christmas in 2001, and had taken the boys on a trip to Georgia in June of 2002, during which he forced them to perform oral sex on him multiple times. Klettke admitted the allegations were true in a statement to police, which he gave after the police advised him that he was not under arrest and was free to leave. Klettke subsequently entered pleas to both charges, which he is now seeking to withdraw by means of a postconviction motion under WIS. STAT. § 974.06 (2009-10).[1] The trial court denied his postconviction motion without a hearing. Additional facts will be set forth as necessary in our discussion below.

STANDARD OF REVIEW

¶3 In order to obtain a hearing on a postconviction motion, a defendant must allege sufficient material facts to entitle him to the relief sought. *See* ***State v. Allen***, 2004 WI 106, ¶¶9, 36, 274 Wis. 2d 568, 682 N.W.2d 433. We review the sufficiency of a postconviction motion de novo, based on the four corners of the motion. ***Id.***, ¶¶9, 27.

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

DISCUSSION

Jurisdiction

¶4 Klettke first argues that the court lacked jurisdiction[2] to accept his plea on the child enticement charge because he sexually assaulted the boys in Georgia, not in Wisconsin. *See generally* WIS. STAT. § 939.03(1)(a) (territorial jurisdiction requires that at least one of the constituent elements of a crime take place in this state). However, the enticement charge was not dependent upon where Klettke assaulted the boys; it was based upon an allegation that Klettke caused a child "to go into a vehicle" with the "intent to have sexual contact" with the child. *See* WIS. STAT. § 948.07(1). Klettke acknowledged on his plea questionnaire that he "did have child ride in vehicle to other locations with intent to have sexual contact." Since Klettke admittedly caused the boys to get into his truck in Wisconsin, with the intent that he would have sexual contact with them on the out-of-state trip, all of the required elements of enticement took place in this state, and the court plainly had jurisdiction over the charge.

Factual Basis for Pleas

¶5 Klettke's second argument is somewhat undeveloped, but appears to be that the court lacked a factual basis to accept one or both pleas because the district attorney "never showed any proo[f] or statements made concerning the semi-trailer-tractor." However, Klettke relieved the State of its burden of proof by entering his pleas. The circuit court could properly rely upon the probable cause

[2] Klettke alternately asserts that the court lacked personal and subject matter jurisdiction, but the substance of his argument actually challenges territorial jurisdiction.

portion of the complaint to establish a factual basis for the pleas, supplemented by the district attorney's supplemental statement at the plea hearing, as well as the plea questionnaire mentioned above. The complaint related not only Klettke's own statement to police, but also the victim's account, which was entirely sufficient to establish a factual basis for the pleas.

Consequences of the Pleas

¶6 Klettke next contends that he should be allowed to withdraw his pleas because no one explained to him that he could be subject to a WIS. STAT. ch. 980 commitment in the future. The State disputes that allegation, pointing out that the plea hearing was postponed for the specific purpose of allowing counsel to discuss ch. 980 with Klettke. In any event, we agree with the State that while an alleged failure to understand the applicability of ch. 980 may constitute a "fair and just reason" for plea withdrawal *prior* to sentencing, it is a collateral consequence that does not warrant plea withdrawal *after* sentencing, when the higher standard of "manifest injustice" applies. *See* ***State v. Myers***, 199 Wis. 2d 391, 394, 544 N.W.2d 609 (Ct. App. 1996).

Competence

¶7 Klettke appears to argue either that he was incompetent to enter his pleas due to illiteracy, a learning disability, a lack of knowledge about the law, and depression issues, or that his pleas were unknowingly and involuntarily entered because of those problems. He further contends that counsel provided ineffective assistance by telling the court that he did not believe that Klettke was incompetent rather than asking for a competency hearing.

¶8 In Wisconsin, "[n]o person who lacks substantial mental capacity to understand the proceedings or assist in his or her own defense may be tried, convicted or sentenced for the commission of an offense so long as the incapacity endures." WIS. STAT. § 971.13(1). A person is competent to proceed if: (1) he or she possesses sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding, and (2) he or she possesses a rational as well as factual understanding of a proceeding against him or her. ***State v. Garfoot***, 207 Wis. 2d 214, ¶15, 558 N.W.2d 626 (1997) (citing ***Dusky v. United States***, 362 U.S. 402 (1960)).

¶9 Whenever there is a reason to doubt the competence of a defendant to proceed, the trial court must order an examination of the defendant under WIS. STAT. § 971.14(1r)(a) and (2). However, before psychiatric examinations or competency proceedings are required, sufficient evidence giving rise to a reason to doubt competency must be presented to the trial court. *See* ***State v. Weber***, 146 Wis. 2d 817, 823, 433 N.W.2d 583 (Ct. App. 1988).

¶10 Klettke's allegations are insufficient to show that either counsel or the court had sufficient reason to raise the issue of competency. Illiteracy, learning disabilities, lack of knowledge about the law, and depression are all relatively common issues facing criminal defendants. The first three problems can be handled by reading relevant documents aloud to the defendant, and taking extra time to discuss matters, as the record shows was done here. With regard to Klettke's depression, the record shows that he was being treated both with medication and therapy. In sum, we see nothing in the record that would suggest Klettke lacked a rational understanding of the proceedings, or that he was unable to assist in his defense.

Suppression Motion

¶11 Finally, Klettke contends that he should be allowed to withdraw his pleas because counsel provided ineffective assistance by failing to conduct adequate discovery and to file a suppression motion. He bases this contention on an allegation that he was not advised of his ***Miranda*** rights prior to giving his statement to police. Klettke does not, however, dispute the statement in the police report that he was told that he was not under arrest and was free to leave prior to the interview. Because Klettke was not in police custody at the time of the interview, the police were not required to advise him of his rights at that time. ***State v. Armstrong***, 223 Wis. 2d 331, 344-45, 588 N.W.2d 606 (1999). Moreover, counsel had no obligation to conduct additional discovery once Klettke indicated that he wanted to enter pleas, and Klettke had not identified any information that counsel could have discovered that would have affected the outcome.

By the Court.—Judgment and order affirmed.

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