COURT OF APPEALS
DECISION
DATED AND FILED

November 15, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2447-CR **Cir. Ct. No. 2007CF3546**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MACK LEWIS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: REBECCA F. DALLET and KEVIN E. MARTENS, Judges.[1] *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

[1] The Honorable Rebecca F. Dallet entered the order denying Lewis's postconviction motion to withdraw his ***Alford*** plea and granting his motion for resentencing. *See* ***North Carolina v. Alford***, 400 U.S. 25 (1970). The Honorable Kevin E. Martens entered the order resentencing Lewis.

¶1 PER CURIAM. Mack Lewis appeals a judgment convicting him of second-degree reckless homicide while armed. He also appeals an order denying his postconviction motion to withdraw his ***Alford*** plea. Lewis argues that he should be allowed to withdraw his plea because the circuit court did not fully explain the meaning of the plea to him. We affirm.

¶2 Prior to accepting a plea, a circuit court must personally address a defendant to determine whether the defendant understands the nature of the charge against him and the consequences of entering a plea. *See* ***State v. Bangert***, 131 Wis. 2d 246, 267, 389 N.W.2d 12 (1986). A defendant is entitled to an evidentiary hearing on a motion alleging that the circuit court did not comply with ***Bangert*** if "the motion makes a *prima facie* showing that the plea was accepted without the trial court's conformance with Wis. Stat. § 971.08 or other mandatory procedures" and "the motion alleges that in fact the defendant did not know or understand the information that should have been provided at the plea colloquy." *See* ***State v. Howell***, 2007 WI 75, ¶27, 301 Wis. 2d 350, 734 N.W.2d 48 (quotation marks, footnote and brackets omitted). We review a postconviction motion alleging a ***Bangert*** violation *de novo*.

¶3 Lewis contends that the plea colloquy was defective because the circuit court did not establish that he knew that an ***Alford*** plea meant that he was pleading guilty, while simultaneously maintaining his innocence. We reject Lewis's argument for several reasons. First, a defendant who enters an ***Alford*** plea is not necessarily maintaining his innocence; a defendant may also enter an ***Alford*** plea when he simply does not want to admit that he committed the crime. *See* ***State v. Multaler***, 2002 WI 35, ¶4 n.4, 252 Wis. 2d 54, 643 N.W.2d 437 ("An ***Alford*** plea is a guilty plea or no contest plea in which the defendant either

maintains innocence *or* does not admit to commission of the crime.") (Emphasis added.)

¶4 Second, the case on which Lewis relies for the proposition that the circuit court erred in failing to provide him with the definition of an ***Alford*** plea during the plea colloquy, ***State v. Garcia***, 192 Wis. 2d 845, 860 n.6, 532 N.W.2d 111 (1995), explicitly provides that the circuit court does *not* need to provide the definition of an ***Alford*** plea on the plea questionnaire—much less the plea colloquy—although doing so is the better practice. The ***Garcia*** court stated: "*Although not required to make the plea acceptable*, including a definition of an ***Alford*** plea on the guilty plea questionnaire may help to further document the defendant's understanding of the plea." ***Garcia***, 192 Wis. 2d at 860 n.6 (emphasis added). Contrary to Lewis's assertion otherwise, ***Garcia*** does not provide support for his argument that the circuit court violated ***Bangert*** by failing to provide him with the definition of an ***Alford*** plea during the colloquy.

¶5 Finally, we reject Lewis's argument because he has failed to allege that he did not, in fact, know that an ***Alford*** plea was a guilty plea accompanied by a claim of innocence, nor does he explain how this would have adversely impacted his decision to enter the plea. As we previously explained, to warrant a hearing on an alleged ***Bangert*** violation, a defendant's motion must allege "that in fact the defendant did not know or understand the information that should have been provided at the plea colloquy." *See* ***Howell***, 301 Wis. 2d 350, ¶27. Because Lewis's motion did not make this requisite allegation, he has not made a *prima facie* showing that he is entitled to a hearing on his motion to withdraw his plea.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2009-10).