COURT OF APPEALS
DECISION
DATED AND RELEASED

JUNE 18, 1996

NOTICE

No. 95-2914-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RUSSELL D. HOBSON,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed*.

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Russell Hobson appeals his conviction for second-degree sexual assault via sexual intercourse with a person under sixteen, having pleaded guilty to the charge. By postconviction motion, Hobson sought to withdraw his guilty plea and have a trial by jury. The trial court could have granted Hobson postsentencing withdrawal of his guilty plea only for a manifest injustice. ***State v. Truman***, 187 Wis.2d 621, 624, 523 N.W.2d 177, 178

(Ct. App. 1994). Hobson argues that he entered his plea on the basis of defective plea procedures and legal representation: (1) the trial court did not adequately advise him at the plea hearing of his constitutional rights; and (2) his trial counsel was ineffective in failing to advise him of the elements of the crime. We reject these arguments and affirm Hobson's conviction.

First, Hobson had actual knowledge of his constitutional rights at the time of his plea. His trial counsel testified at the postconviction hearing that he explained to Hobson his rights and that Hobson understood his rights, regardless of whether the trial court adequately explained such rights at the plea hearing. Hobson also signed a waiver of rights form that outlined his rights. As the judge of the evidence's weight and credibility, the postconviction court could reasonably accept the truthfulness of trial counsel's testimony. From counsel's testimony, the court could reasonably conclude that Hobson had in fact understood his rights at the time of the plea. Hobson's actual knowledge of his rights cured any defect in the plea procedures, which we therefore need not examine. *See* ***State v. Bangert***, 131 Wis.2d 246, 274-75, 389 N.W.2d 12, 26 (1986).

Second, Hobson had actual knowledge of the elements of the crime of second-degree sexual assault. There were only two elements: (1) sexual intercourse; and (2) a victim under the age of sixteen. *See* § 948.02(2), STATS.; WIS J I—CRIMINAL 2104 (1989). Trial counsel testified that he explained to Hobson the elements. Hobson never identified what his confusion was over the elements. Rather, he admitted that he had read the criminal complaint and had pleaded guilty to avoid additional trauma to the victim. We cannot conceive of how Hobson could read a complaint and have concern for a victim's emotional trauma without knowing the elements of the crime. Hobson's concern for the victim's emotional trauma circumstantially showed his knowledge of what caused the trauma, which itself circumstantially showed his knowledge of the criminal elements. Under these circumstances, the State has shown that Hobson understood the charge's elements. In light of this evidence, Hobson has not shown that his trial counsel's performance was deficient or that he suffered prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984).

By the Court.—Judgment and order affirmed.

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