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DISTRICT IV

April 4, 2013

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You are hereby notified that the Court has entered the following opinion and order:

2010AP2910-CR

State of Wisconsin v. Michael R. Leppert (L.C. # 2008CF267)

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

Michael Leppert has filed a second appeal from a judgment convicting him of six counts of burglary as a party to a crime and one count of manufacture or delivery of THC. On his first appeal, this court rejected a no-merit report from counsel on the grounds that Leppert had made sufficient allegations to warrant a plea withdrawal hearing based on deficiencies in the plea colloquy relating to party-to-a-crime liability. On remand, the circuit court determined that, although the plea colloquy did not adequately demonstrate that Leppert understood the aiding-and-abetting aspect of party-to-a-crime liability, the State met its burden to establish that

Leppert's plea was nonetheless knowingly and voluntarily entered because the facts showed that he had admitted to being a "direct, active participant" in the burglaries. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).¹ We affirm.

The circuit court's reasoning stems from the definition of party to a crime set forth in WIS. STAT. § 939.05. The statute provides that a party to a crime includes anyone who directly commits the crime, intentionally aids or abets the commission of the crime, or engages in a conspiracy with another to commit it. WIS. STAT. § 939.05(2). Thus, although it is customary to charge party-to-a-crime liability only when the State intends to establish a defendant's criminal liability based upon a theory of aiding and abetting or conspiracy, technically every crime committed directly by a defendant could also be charged as party to a crime.

Here, the circuit court found that Leppert had admitted to facts sufficient to establish his direct commission of the charged offenses. This distinguishes cases in which the defendant needed to be informed about aiding and abetting or conspiracy liability because the State would need to rely upon one of those theories to prove its case at trial. In the circumstances of this case, any additional explanation to Leppert during the plea colloquy as to what constituted aiding and abetting or conspiracy would have been superfluous, because it would not have contributed to Leppert's understanding of what the State needed to show in order to convict him. We therefore affirm the circuit court's determination that Leppert's plea was knowingly and

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

voluntarily entered based upon an explanation of the elements of the offense as a direct actor, notwithstanding the allegation of party-to-a-crime liability in the information.

IT IS ORDERED that the judgment is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals