

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 18, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 99-1636

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

VICTOR L. GREEN,

DEFENDANT-APPELLANT.

APPEAL from order of the circuit court for Rock County:
JOHN W. ROETHE, Judge. *Affirmed.*

Before Eich, Vergeront and Deininger, JJ.

¶1 PER CURIAM. Victor L. Green appeals from an order denying him postconviction relief. He moved, under WIS. STAT. § 974.06 (1997-98),¹ to vacate his 1986 conviction for second degree murder, as a party to the crime. The

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

issues are whether Green knew that the crime carried a masking enhancer when he plead guilty to it, and whether the applicable law in 1986 allowed the State to add a masking enhancer to a second degree murder charge. We affirm.

¶2 Green conspired with two others to rob a liquor store. One of his co-conspirators subsequently entered the store while armed and masked, where he murdered a store employee. Although Green did not directly participate in the crime, the State charged him as a party to the crime of armed robbery while masked, and second degree murder while masked. Subsequent to a plea bargain, an amended information charged only the murder, and Green pled guilty. The maximum prison term he faced was twenty years for the murder plus five years for the masking enhancer, and that is what the court imposed.

¶3 At Green's plea hearing the court asked him what the charge against him was and Green responded "second degree murder and aiding and abetting [a] co-conspirator." Claiming that question and answer as his proof, Green contends that he did not knowingly plead guilty to the masking enhancer, and in fact did not understand that he faced an additional five years in prison as a result of it. However, the full record of the plea hearing conclusively establishes otherwise. At the outset of the hearing the trial court advised Green that he was charged as a party to the crime of murder as a natural and probable consequence of the armed robbery, and further stated that the twenty year maximum penalty "may be in increased by an additional five years because the defendant concealed, disguised or altered his appearance during the commission of the murder with intent to make it less likely that he would be identified." The court asked Green if he understood this and Green responded "yes." The trial court again advised Green that he faced a maximum exposure of "twenty years on the basic charge and another five years on the enhancement provision, so the maximum exposure on this is twenty-five

years. Is there any question about that?” Green responded “no.” The court again asked Green if he was aware of the enhancement provision. Green indicated that he was. The trial counsel reported that he was fully satisfied that Green understood all aspects of the proceeding and stated that he had gone over the elements of this charge with Green. The court then advised Green that among the rights he was waiving was a jury determination beyond reasonable doubt that he provided his co-conspirator with a mask or a gun. Finally, immediately before Green entered his plea the court asked Green to recite the maximum penalty. Green responded that it was “twenty-five years. Twenty years and plus additional five.”

¶4 A defendant who challenges a guilty plea must make a *prima facie* showing that the trial court did not adequately inquire of the defendant’s understanding of the charge and the consequences of the plea, and that the defendant did not in fact understand them. *State v. Bangert*, 131 Wis. 2d 246, 274, 389 N.W.2d 12 (1986). In view of the colloquy described and quoted above, Green has failed to make that showing.

¶5 The State properly charged Green and the trial court properly convicted him of felony murder with a masking enhancer. WIS. STAT. § 939.641(2) (1985-86) provided that a person committing any felony while concealing his or her appearance with intent to hinder identification, faced an enhanced penalty of five years. A murder committed as a natural and probable consequence of felonious acts, under WIS. STAT. § 940.02(2) (1985-86), was classified as a Class B Felony. Green’s argument on this point is without merit. The conviction, with an enhancer, was plainly authorized by statute.

By the Court.—Order affirmed.

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

