COURT OF APPEALS
DECISION
DATED AND FILED

July 22, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1425-CR **Cir. Ct. No. 1996CF966444**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT LEE HAMILTON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Robert Lee Hamilton appeals an order denying his motion to withdraw his plea. He argues that: (1) he was not advised of, and was unaware of, the three-year presumptive minimum penalty for two of the counts to which he pled; (2) he was not advised of, and was not aware of, the meaning of

"utter disregard," an element of one of the charges to which he pled; (3) he did not understand the maximum potential penalty he faced due to incorrect advice from his lawyer; and (4) he received constitutionally ineffective assistance from his lawyer. We affirm.

¶2 Using a box cutter, Hamilton robbed, sexually assaulted, and choked a female employee at the Milwaukee Hyatt Hotel in 1996. The day after the assault, Hamilton was stopped by the police for suspicious behavior and arrested on the basis of an outstanding warrant. He struggled with the police as they handcuffed him, injuring one of the officers with a box cutter. Hamilton was convicted of armed robbery, first-degree sexual assault, attempted first-degree intentional homicide while armed, first-degree recklessly endangering safety while armed and resisting an officer, all as a habitual offender. He was sentenced to an indeterminate term of 155 years in prison.

¶3 Hamilton first argues that his plea was not knowingly and voluntarily entered because he was not advised of, and was unaware of, the three-year presumptive minimum penalty on two of the counts to which he pled. The transcript of the plea hearing shows that the circuit court did not advise Hamilton of the presumptive three-year minimum penalty for two of the counts. Even so, Hamilton is not entitled to relief because this defect in the plea colloquy was insubstantial. *See* ***State v. Taylor***, 2013 WI 34, ¶34, 347 Wis. 2d 30, 829 N.W.2d 482 (a defendant is not entitled to relief based on an insubstantial defect in a plea colloquy). Hamilton was repeatedly informed that the maximum term he faced was 173 years in prison. In fact, Hamilton *asked* the circuit court to impose a thirty-year sentence. Under these circumstances, Hamilton was aware of "the range of punishments to which he [was] subjecting himself by entering a plea," as required by ***State v. Bangert***, 131 Wis. 2d 246, 261-62, 389 N.W.2d 12 (1986),

despite the circuit court's failure to inform him that two of the charges carried a presumptive three-year minimum term of imprisonment.

¶4 Hamilton next argues that his plea was not knowingly and voluntarily entered because he was not advised of, and was not aware of, the meaning of "utter disregard," one of the elements of first-degree reckless injury. "[T]he circuit court's only duty is to inform the defendant of the charge's nature or, instead, to ascertain that the defendant in fact possesses such information." ***State v. Trochinski***, 2002 WI 56, ¶20, 253 Wis. 2d 38, 644 N.W.2d 891 (internal quotation marks and citation omitted). The circuit court is not required to "thoroughly … explain or define every element of the offense to the defendant." ***Id.*** During the plea colloquy, the circuit court asked Hamilton if he recklessly endangered the safety of another "while armed with a dangerous weapon, under circumstances which show utter disregard for human life." We agree with the State that the meaning of "utter disregard" is plain and did not need to be separately defined by the circuit court. It is commonly understood that "utter disregard" for human life means "absolute disregard" or "total disregard" for human life. We reject Hamilton's argument that his plea was not knowingly and voluntarily entered because he did not understand the nature of the crime of first-degree recklessly endangering safety.

¶5 Hamilton next contends that he did not understand the maximum penalty when he pled guilty because his lawyer told him he intended to challenge the habitual criminality enhancers on double jeopardy grounds. Hamilton explains that he thought the maximum penalty would be reduced after that challenge. The record belies Hamilton's claim. The circuit court explicitly told Hamilton that he faced 173 years of imprisonment during the plea hearing. The circuit court asked Hamilton whether he understood the maximum penalty, and Hamilton said that he

did. The plea questionnaire and waiver-of-rights form also listed the correct maximum prison terms for each of the five charges. While Hamilton knew that his lawyer intended to argue that the penalty enhancers violated double jeopardy, and was aware that if his attorney prevailed, substantial time would be taken off his exposure, he did not receive any guarantees that his lawyer's argument would be successful. We reject Hamilton's argument that he did not understand the maximum penalty he faced when he entered his plea.

¶6 Finally, Hamilton argues that his trial lawyer was constitutionally ineffective for failing to challenge the penalty enhancers before he entered his plea. When Hamilton's lawyer challenged the penalty enhancers by motion after the plea hearing, but before sentencing, the motion was not successful. Hamilton's argument is unavailing because he is unable to show that his lawyer's actions prejudiced him. *See* ***Strickland v. Washington***, 466 U.S. 668, 694 (1984) (to prove ineffective assistance of counsel, a defendant must show both that his lawyer's actions were deficient and that the deficient actions prejudiced him).

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).