COURT OF APPEALS
DECISION
DATED AND FILED

December 9, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 96-3413-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RAMON A. URENA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Schudson, JJ.

PER CURIAM. Ramon A. Urena appeals from a judgment of conviction following his guilty pleas for one count of delivery of cocaine and one count of possession of cocaine with intent to deliver, both as party to a crime. *See* §§ 161.41(1), 161.41(1)(m), and 939.05, STATS. He also appeals from an order denying him postconviction relief. Urena claims that his guilty pleas were not

knowing and voluntary. Urena further claims that the trial court erroneously exercised its discretion in sentencing him to 15 years in prison. We affirm.

Urena pled guilty to delivery of cocaine and possession of cocaine with intent to deliver, both as party to a crime. The trial court sentenced him to five years on one count, and ten years on the other, consecutive. Subsequently, Urena filed postconviction motions to withdraw his guilty pleas and, in the alternative, for sentence modification. Attached to his motion for withdrawal of the guilty pleas was Urena's affidavit in which he asserted that he did not understand the guilty plea questionnaire he signed, the nature of the crimes charged, the constitutional rights he was giving up by pleading guilty, and the burdens associated with being charged as a "party to a crime."[1] Urena also claimed that he was coerced into pleading guilty because, according to Urena, his lawyer told him that if he did not plead guilty, he would be charged with additional crimes. The trial court denied the motion without a hearing. Urena argues that the trial court should have granted his motion to withdraw his guilty pleas, or granted him a hearing on his motion.

After sentencing, a plea may be withdrawn only if doing so is necessary to correct a manifest injustice. ***State v. Booth***, 142 Wis.2d 232, 235, 418 N.W.2d 20, 21 (Ct. App. 1987). A plea is manifestly unjust if it was not entered knowingly, voluntarily, and intelligently. ***State v. Giebel***, 198 Wis.2d 207, 212, 541 N.W.2d 815, 817 (Ct. App. 1995). In order to assure that a plea is

[1] He places most of the blame on the fact that his native language is Spanish and that he does not read or write English very well. When Urena entered his guilty pleas, however, a Spanish interpreter was utilized for the entire hearing, despite trial counsel's assurance that Urena could communicate in English. The interpreter translated everything into Spanish for Urena and the transcript is clear that Urena responded to everything in Spanish. We, therefore, summarily reject this contention.

entered knowingly, voluntarily, and intelligently, the trial court is obligated by § 971.08(1)(a), STATS., to ascertain that a defendant understands the nature of and potential punishment for the charge and that a factual basis exists for a finding of guilt. ***State v. Bangert***, 131 Wis.2d 246, 260–261, 389 N.W.2d 12, 20 (1986). It must also ascertain that the defendant understands the constitutional rights he or she is waiving. ***Id.***, 131 Wis.2d at 270–272, 389 N.W.2d at 24–25. As a first step, a defendant must first make a *prima facie* showing of noncompliance by the trial court and allege that he or she did not understand the information that "should have been provided at the plea hearing." ***Id.***, 131 Wis.2d at 274, 389 N.W.2d at 26. If the defendant does that, the burden shifts to the State to show by clear and convincing evidence that the defendant did, in fact, enter the plea knowingly, voluntarily, and intelligently. ***Id.***

In order to establish that the defendant has an understanding of the elements of the crime charged, the trial court may: (1) personally summarize the elements for the defendant; (2) ask defense counsel whether he or she explained the elements of the crime to the defendant, and then ask the lawyer to "reiterat[e]" what he or she told the defendant; or (3) "expressly refer to the record or other evidence of defendant's knowledge of the nature of the charge established prior to the plea hearing." ***Bangert***, 131 Wis.2d at 268, 389 N.W.2d at 23. In giving examples of what may constitute compliance with the third alternative, ***Bangert*** explained: "A trial judge may also specifically refer to and summarize any signed statement of the defendant which might demonstrate that the defendant has notice of the nature of the charge." ***Id***. This the trial court did. During the plea hearing, Urena's counsel, in Urena's presence, confirmed that he explained the guilty plea questionnaire that Urena signed to Urena more than once. The guilty plea questionnaire was signed by Urena on both sides. Regarding his contention that

he did not understand what he was charged with, the plea questionnaire, which Urena conceded that he read, itemized the two charges against him. Indeed, Urena affirmed in open court that he reviewed each of the paragraphs in the guilty plea questionnaire. Moreover, during the plea hearing, the trial court explained the two charges to Urena. Although the trial court did not specifically explain "party to a crime," Urena's counsel confirmed, at the plea hearing, that he went over with Urena "those portions of the complaint that describe him either as a direct actor or him as a party to a crime of an actor." This satisfies the trial court's burden under § 971.08(1), STATS., as interpreted by ***Bangert***. *See* ***State v. Moederndorfer***, 141 Wis.2d 823, 828–829 n.1, 416 N.W.2d 627, 630 n.1 (Ct. App. 1987). With regard to Urena's contention that he was coerced into pleading guilty, Urena affirmatively stated, in both his guilty plea questionnaire and in response to the trial court's inquiry, that he was not threatened or coerced to enter guilty pleas. The trial court was not required to grant Urena an evidentiary hearing on his postconviction motion. *See* ***State v. Bentley***, 201 Wis.2d 303, 310–311, 548 N.W.2d 50, 53 (1996) (court looks past "conclusory allegations" for the existence of "objective factual assertions" that support a defendant's postconviction motion). Further, because the record reflects knowing, voluntary, and intelligent pleas, the trial court properly denied Urena's motion to withdraw his guilty pleas.

Urena also challenges the fifteen-year sentence imposed by the trial court, arguing that during the sentencing hearing the trial court improperly emphasized the severity of the offense. Because trial courts have wide discretion in sentencing, our review is limited to whether the trial court erroneously exercised its discretion. ***State v. Larsen***, 141 Wis.2d 412, 426, 415 N.W.2d 535, 541 (Ct. App. 1987). The primary factors that must be considered when sentencing a defendant are "the gravity of the offense, the character of the

offender, and the need to protect the public." ***Id.***, 141 Wis.2d at 427, 415 N.W.2d at 541. The weight to be given each factor is within the trial court's discretion. ***Cunningham v. State***, 76 Wis.2d 277, 282, 251 N.W.2d 65, 67–68 (1977).

In imposing sentence, the trial court indicated that the "most aggravating component of this case certainly is the nature of the drug-trafficking operation that Mr. Urena was admittedly part of plus the impact that this dealing had on the community." Although the trial court also noted that Urena had "no reported contacts with the system," the trial court concluded that this positive fact was outweighed by serious crimes in which Urena was involved, so that the "sentence as recommended by the state [15 years] is an appropriate and fair one."[2] The trial court's sentence was well within the ambit of its discretion.

By the Court.—Judgment and order affirmed.

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

[2] Urena was facing a possible 50-year maximum prison term on both counts.