**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

May 6, 1998

**Marilyn L. Graves**
**Clerk, Court of Appeals**
**of Wisconsin**



**No. 97-1622-CR**

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

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT J. PETTIS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Waukesha County: MARIANNE E. BECKER, Judge. *Affirmed.*

Before Brown, Nettesheim and Anderson, JJ.

PER CURIAM. In this appeal, Robert J. Pettis challenges the entry of his no contest pleas to burglary contrary to § 943.10(1)(a), STATS., and theft contrary to § 943.20(1)(a) and (3)(c), STATS., as a habitual offender. Because we conclude that the trial court met the requirements for taking a no contest plea, we

affirm the judgment of conviction and the postconviction order denying his motion to withdraw his pleas.

Pettis filed a postconviction motion to withdraw his no contest pleas alleging that the pleas were not taken in accordance with ***State v. Bangert,*** 131 Wis.2d 246, 389 N.W.2d 12 (1986), because the trial court engaged Pettis in a perfunctory plea colloquy. The postconviction court denied the motion after concluding that the plea colloquy was adequate in conjunction with the request to enter plea and waiver of rights form Pettis signed which enumerated the charges against him, the penalties and the constitutional rights waived by the no contest pleas. Because we agree with the postconviction court that the plea colloquy in this case was adequate, we do not address any appellate issues relating to the postconviction motion hearing and its outcome. Instead, we focus on the plea hearing itself because we are as able as the postconviction court to review the plea colloquy record. Having had an adequate plea colloquy, Pettis cannot show a manifest injustice requiring withdrawal of the pleas. *See* ***State v. Bentley,*** 201 Wis.2d 303, 311, 548 N.W.2d 50, 54 (1996).

Pettis points to the following deficiencies in the plea colloquy. He argues that the trial court minimally reviewed the plea form and elicited perfunctory responses, the court accepted the pleas prior to having a colloquy, did not inform Pettis of the consequences of his pleas and did not specifically address the constitutional rights waived by the pleas. Pettis further claims that although the court discussed the elements of the crimes and the maximum penalties, the court did not inform Pettis of the law in relation to the facts. Pettis also argues that the court did not ask him if he had conferred sufficiently with counsel, if he was satisfied with counsel's representation, if counsel explained the consequences of the plea and if counsel explained in detail the contents of the plea form.

> Before accepting a plea from a defendant, a trial court must "[a]ddress the defendant personally and determine that the plea is made voluntarily with understanding of the nature of the charge." Section 971.08(1)(a), STATS. The trial court must, therefore, establish that the defendant has "an awareness of the essential elements of the crime." *See* ***State v. Bangert,*** 131 Wis.2d 246, 267, 389 N.W.2d 12, 23 (1986). The trial court can do this in any one of three ways: 1) by personally summarizing the elements for the defendant; 2) by asking defense counsel whether he or she explained the elements of the crime to the defendant, and then asking the lawyer to "reiterat[e]" what he or she told the defendant; or 3) by "expressly refer[ing] to the record or other evidence of defendant's knowledge of the nature of the charge established prior to the plea hearing." ***Id.*** at 268, 389 N.W.2d at 23.

***State v. Johnson,*** 210 Wis.2d 197, 201, 565 N.W.2d 191, 193, *petition for review denied*, 211 Wis.2d 532, 568 N.W.2d 299 (1997) (footnotes omitted).

A trial court can also rely upon a plea waiver form executed by the defendant as an indication of the defendant's understanding of matters relating to the plea. *See* ***State v. Moederndorfer,*** 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). At the other end of the spectrum, the trial court may not solely rely upon the plea form after a limited colloquy addressing whether the defendant reviewed the form with counsel and whether the defendant understood the form. *See* ***State v. Hansen,*** 168 Wis.2d 749, 755-56, 485 N.W.2d 74, 77 (Ct. App. 1992).

The trial court is charged with assuring that the defendant understands the nature of the charge and the rights waived by the plea. *See* ***Bangert,*** 131 Wis.2d at 266, 270, 389 N.W.2d at 23. In the case at hand, the trial court conducted a colloquy with Pettis and his counsel relating to Pettis's desire to enter no contest pleas. The court reviewed the charges against Pettis based upon the information, the maximum possible penalty for each crime and had the State

set forth the factual basis for the no contest pleas. The court confirmed the terms of the plea agreement and the habitual criminality allegations. The court then ascertained Pettis's age, education and the fact that he was currently on medication. Having prior familiarity with Pettis's medication use, the court explored the medication situation in detail and determined that the medication did not adversely affect Pettis's ability to understand the plea proceedings.[1]

The court stated that Pettis's plea would waive his right to have the State prove the crimes beyond a reasonable doubt and Pettis affirmed that he would not take issue with the allegations against him and that he was waiving his right to a jury trial. Pettis stated that no one forced him to give up his rights. The court questioned Pettis's counsel as to his use of the plea form with Pettis. Counsel stated that he read the form to Pettis the day before the plea hearing, they went through each paragraph and Pettis affixed his initials next to each paragraph.

The plea form recites Pettis's age, his education, the crimes and maximum possible penalties, the constitutional rights waived by the no contest pleas and that he discussed matters with counsel and was satisfied with the representation he had received. The colloquy in this case demonstrates that Pettis understood that the rights detailed on the form were waived by his no contest pleas. *See* ***Moederndorfer,*** 141 Wis.2d at 828-29, 416 N.W.2d at 630.

Our review of the record reveals that the trial court touched upon the requisite topics in taking Pettis's pleas. The objective of a plea colloquy is to convey the requisite information to the defendant and ascertain his or her

[1] A defendant under the influence of medication may enter a no contest plea if the medication does not adversely affect the defendant's decision-making ability. *See* ***Jones v. State,*** 71 Wis.2d 750, 755-56, 238 N.W.2d 741, 744 (1976).

understanding of that information. However, the trial court has a certain degree of flexibility in the manner in which it satisfies that objective. *See* ***Johnson,*** 210 Wis.2d at 201, 565 N.W.2d at 193. The trial court properly referred to other evidence of Pettis's knowledge of the nature of the charges, i.e., the waiver form and counsel's prehearing discussions with the defendant in addition to the colloquy with the trial court at the plea hearing.

*By the Court.*—Judgment and order affirmed.

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