

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 16, 1998

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 97-3623-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DARRYL H. STEGALL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: THOMAS P. DOHERTY and CLARE L. FIORENZA, Judges.¹ *Affirmed.*

WEDEMEYER, P.J.² Darryl H. Stegall appeals from a judgment of conviction entered by the trial court after he pleaded guilty to violating a domestic

¹ The Hon. Thomas P. Doherty presided over the plea hearing and entered the judgment of conviction. The Hon. Clare L. Fiorenza entered the order denying Stegall's postconviction motion.

² This appeal is decided by one judge pursuant to § 752.31(2), STATS.

abuse restraining order, contrary to § 813.12(8), STATS. Stegall also appeals from the trial court's order denying his postconviction motion for plea withdrawal. Stegall claims that the trial court violated § 971.08, STATS., in accepting his plea, because there was no factual basis for his plea. Because Stegall stipulated that the facts alleged in the criminal complaint were true when he entered his plea, and the trial court properly concluded that those facts provided a sufficient basis for his guilty plea, this court affirms.

I. BACKGROUND

On October 8, 1996, the State filed a criminal complaint against Stegall charging him with two counts of violating a domestic abuse restraining order, contrary to § 813.12(8), STATS.³ The complaint alleged that a domestic abuse injunction order, naming Jacqueline E. as the petitioner, and Stegall as the respondent, was entered on November 11, 1995, effective until June 19, 1997. The complaint alleged that the domestic abuse injunction ordered, in pertinent part, that Stegall avoid contacting Jacqueline, in person, at home, in writing, by telephone or by the agency of a third person. The domestic abuse injunction, which was attached to the complaint, states that Stegall is “ordered ... to refrain from committing acts of domestic abuse against [Jacqueline].” The injunction, however, does not specifically order Stegall to avoid contacting Jacqueline by telephone. The complaint also alleged that Jacqueline told the police that on

³ The complaint actually states that Stegall was charged with violating § 813.125(8), STATS. This, however, appears to be a typographical error, as § 813.125(8) concerns full faith and credit issues related to harassment orders, and Stegall's judgment of conviction states that he pleaded guilty to, and was convicted of, a violation of § 813.12(8), STATS. Stegall was also apparently charged with one count of battery, in violation of § 940.19(1), STATS., to which he pleaded guilty. That case, however, is not documented in the record, and is not at issue in this appeal.

September 28, 1996, Stegall telephoned her from the Milwaukee County Jail and stated that “two bullets would separate the two of them, nothing else would separate them because he still loved her and he wanted to be with her and she would be with no one else.” The complaint states that Jacqueline then called the county jail and said that Stegall had telephoned her at her residence in violation of a restraining order. About twenty minutes later, Stegall telephoned Jacqueline again, and stated that “he had gotten her earlier message and would not telephone her anymore but that he would see her when he got out and that she had better watch out.”

At Stegall’s initial appearance, he indicated that he wanted to proceed *pro se*, and the trial court adjourned his case to give him time to discuss the matter with his court-appointed counsel. During the adjournment, Stegall agreed to plead guilty to one of the two counts. The trial court then held a plea hearing, during which Stegall pleaded guilty to count two of the complaint. During the court’s colloquy, the following exchange occurred:

THE COURT: Thank you. May I use the criminal complaints in these cases as a factual basis for finding upon the pleas?

[DEFENSE COUNSEL]: Yes, your Honor, as to the battery case.

As to the violation of domestic abuse injunction, we would stipulate but for the fact that my client still feels that the attached copy of the domestic abuse injunction is invalid.

THE COURT: But you understand by reason of your plea you’re waiving your rights to contest that issue, Mr. Stegall?

THE DEFENDANT: Yes.

The court then accepted Stegall's guilty plea, entered a judgment of conviction, and sentenced Stegall to nine months in the House of Correction, consecutive to another sentence, and two years of probation. Stegall then filed a postconviction motion to withdraw his guilty plea, which the trial court denied. Stegall now appeals.

II. ANALYSIS

On appeal, Stegall essentially claims that: (1) he did not actually stipulate that the complaint provided a factual basis for his plea; and (2) even if he did stipulate that the facts alleged in the complaint were true, those facts could not have provided a basis for his plea, because the domestic abuse injunction did not prohibit him from telephoning Jacqueline. This court concludes that Stegall did stipulate that the facts alleged in the complaint were true, and that the trial court reasonably concluded that those facts provided a sufficient basis for Stegall's guilty plea.

"To withdraw a guilty plea after sentencing, the defendant must show that a manifest injustice would result if the withdrawal were not permitted." *State v. Booth*, 142 Wis.2d 232, 235, 418 N.W.2d 20, 21 (Ct. App. 1987) (citation omitted). Before accepting a guilty plea, the trial court must ascertain "that the defendant in fact committed the crime charged," *see* § 971.08(1)(b), STATS., and, historically, a manifest injustice occurs when the trial court fails to establish a sufficient factual basis that the defendant committed the offense to which he or she pleads. *See State v. Smith*, 202 Wis.2d 21, 25, 549 N.W.2d 232, 233-34 (1996). The burden of proving a manifest injustice is on the defendant, by clear and convincing evidence, and the trial court's decision not to allow the defendant to

withdraw his plea will only be reversed for an erroneous exercise of discretion. *See Booth*, 142 Wis.2d at 237, 418 N.W.2d at 22.

In this case, the trial court properly found that Stegall stipulated that the facts alleged in the complaint were true. As noted, the following exchange occurred during the plea colloquy:

THE COURT: Thank you. May I use the criminal complaints in these cases as a factual basis for finding upon the pleas?

[DEFENSE COUNSEL]: Yes, your Honor, as to the battery case.

As to the violation of domestic abuse injunction, we would stipulate but for the fact that my client still feels that the attached copy of the domestic abuse injunction is invalid.

THE COURT: But you understand by reason of your plea you're waiving your rights to contest that issue, Mr. Stegall?

THE DEFENDANT: Yes.

Stegall argues that his counsel's statement did not amount to a stipulation that the facts alleged in the complaint were true, because his counsel stated that Stegall "still [felt] that the attached copy of the domestic abuse injunction is invalid." By making that qualification, however, Stegall's counsel did not claim that the *facts* alleged in the complaint were untrue. To the contrary, Stegall's counsel clearly communicated that Stegall was willing to stipulate to the facts alleged in the complaint, but that Stegall disputed the legal validity of the domestic abuse injunction. Although Stegall now claims that he did not make the telephone calls alleged in the complaint, when he was questioned by the trial court during the plea colloquy, he did not claim that any of the facts alleged in the complaint were

untrue. Therefore, this court concludes that the trial court properly found that Stegall stipulated to the facts alleged in the complaint.

In addition, the trial court reasonably concluded that those facts provided a sufficient basis for Stegall's guilty plea. Although the domestic abuse injunction, for unknown reasons, did not prohibit Stegall from telephoning Jacqueline, it did specifically order Stegall to "refrain from committing acts of domestic abuse against [Jacqueline]." Section 813.12(1)(a)1, STATS., defines domestic abuse as "[i]ntentional infliction of physical pain, physical injury or illness," or under § 813.12(1)(a)4, "[a] threat to engage" in such infliction. The complaint alleged that Stegall not only telephoned Jacqueline, but also stated that nothing but "two bullets" would separate them, and warned Jacqueline to "watch out." This conduct is sufficient to constitute a threat by Stegall to inflict physical pain, injury or illness on Jacqueline. Therefore, under § 813.12(1)(a)1 & 4, the complaint alleged facts sufficient to prove that Stegall had domestically abused Jacqueline in violation of the domestic abuse injunction. As noted, Stegall stipulated to the truth of the facts contained in the complaint. Thus, the trial court reasonably concluded that Stegall's guilty plea was supported by a sufficient factual basis, and we must uphold the judgment of conviction and the order denying Stegall's postconviction motion.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.