COURT OF APPEALS
DECISION
DATED AND FILED

May 6, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2047-CR **Cir. Ct. No. 2012CF521**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICK G. LYNCH,

DEFENDANT-APPELLANT.

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

Before Neubauer, P.J., Reilly and Gundrum, JJ.

¶1 PER CURIAM. Patrick G. Lynch appeals from a judgment of conviction and an order denying his postconviction motion. He contends that the circuit court erred in refusing to suppress his statements to police. We reject Lynch's claim and affirm the judgment and order.

¶2 Lynch was convicted following a no contest plea to armed robbery as a party to a crime. The charge stemmed from allegations that he robbed a gas station with a codefendant's gun. The allegations were based, in part, on Lynch's statements to police in which he admitted participating in a string of armed robberies.

¶3 After sentencing, Lynch filed a postconviction motion for plea withdrawal and for a new trial, arguing that his statements to police should have been suppressed. Following a hearing on the matter, the circuit court denied the motion, concluding that Lynch had waived the issue by entering his plea. This appeal follows.

¶4 On appeal, Lynch renews his argument for suppression of his statements. He complains that his statements were made in violation of his invocation of the right to counsel under ***Miranda***.[1] Additionally, he asserts that his statements were involuntary due to coercion by the police and his impaired mental state brought on by his alcohol and drug dependency.

¶5 As a threshold matter, we acknowledge that Lynch has waived his argument by virtue of his plea. *See* ***State v. Kelty***, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886 (a guilty or no contest plea waives all nonjurisdictional

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

defects and defenses, including constitutional claims). This is often referred to as the guilty-plea-waiver rule. ***Id.***[2]

¶6 Because the guilty-plea-waiver rule "is a rule of judicial administration and not of power," we can decline to apply the rule in our discretion. ***State v. Tarrant***, 2009 WI App 121, ¶6, 321 Wis. 2d 69, 772 N.W.2d 750. We choose to do so here, as it is clear from the record that a motion to suppress Lynch's statements would have failed on the merits.

¶7 With respect to Lynch's first complaint, there is no indication that police did not cease their interviews with him when he invoked his right counsel to under ***Miranda***. Indeed, in his brief, Lynch admits that when he requested an attorney during his two interviews with police, "the interviews ceased promptly." Lynch has presented no other basis for suppression on this point.

¶8 With respect to the voluntariness of Lynch's statements, any claims of coercion are undermined by his actions at the plea hearing. There, Lynch denied receiving any promises or threats to get him to enter his plea and described in his own words the role he played in the armed robbery. Lynch told the circuit court that his codefendant "drove up there, gave me the gun, I walked in there and asked the—told the lady to give me money" and that he displayed the gun while doing so.

[2] WISCONSIN STAT. § 971.31(10) (2013-14) carves out an exception to the guilty-plea-waiver rule and permits appellate review of an order denying a motion to suppress evidence. However, that exception is not at play in this case because Lynch did not file a suppression motion, so there is no order denying such a motion. Lynch does not accuse his trial counsel of ineffective assistance for failing to file a suppression motion.

¶9 Finally, the fact that Lynch may have been suffering from effects of alcohol and drug dependency during his interviews with police does not render his statements involuntary. *See* ***State v. Clappes***, 136 Wis. 2d 222, 240, 401 N.W.2d 759 (1987) (the existence of pain and/or intoxication is insufficient to render a statement involuntary). In any event, Lynch's personal characteristics are irrelevant, as he has failed to show that police engaged in coercive conduct when obtaining his statements.[3] *See* ***State v. Owen***, 202 Wis. 2d 620, 642, 551 N.W.2d 50 (Ct. App. 1996).

¶10 For these reasons, we affirm the judgment and order.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2013-14).

[3] The closest Lynch gets to establishing coercive conduct is his allegation that police told him he would be "run over by a bus" if he did not cooperate. At the postconviction motion hearing, Lynch admitted that when he asked the police what they meant by this comment, "[t]hey said that there was 15 counts that they were going to charge me with, and they would make sure that every one of those counties [sic] or charges stuck and I got the maximum on all of them." Clearly, the police explained the comment, and Lynch understood that it was not meant to be taken literally. Thus, Lynch cannot reasonably argue that he believed he was in danger of physical harm that rendered his statements involuntary.