COURT OF APPEALS
DECISION
DATED AND FILED

June 20, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-2403-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SISAKHONE S. DOUANGMALA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Brown County: DONALD R. ZUIDMULDER, Judge. *Affirmed in part; reversed in part and cause remanded with directions.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Sisakhone Douangmala appeals his three convictions for burglary, robbery, and false imprisonment, all as a party to the crime, having pleaded no contest to the charges. After sentencing, he moved the

trial court to modify his sentence and to withdraw his plea. Douangmala sought resentencing on the ground that the prosecutor overstated his role in the crimes and that the trial court improperly based his sentence on that misstated role. Douangmala sought to withdraw his plea on the ground that he entered the plea without understanding the risk of deportation to his native Laos. In support of this argument, he points out that the State did not furnish him an interpreter. The trial court denied both claims without an evidentiary hearing, permitting only argument by counsel. On appeal, Douangmala argues that the trial court should have held an evidentiary hearing and that he stated good cause for relief on both issues. We reject Douangmala's sentencing and interpreter arguments. However, we reverse the trial court's ruling on the deportation issue and remand the matter for further proceedings on that matter.

¶2 Douangmala and several others entered a residence, concealed their identity, stole property by force, and confined the owner's eleven-year-old daughter. Douangmala pleaded no contest, but the trial court never made the findings mandated by WIS. STAT. § 885.37(1)(b)[1] on whether Douangmala's English language ability required an interpreter. Douangmala indicated on his plea questionnaire that he understood English at a 20% level, with help. He told the trial court that he was satisfied with his trial counsel at what he called a "50-50" level, and that he understood the plea hearing "a little bit, not much." The trial court ultimately concluded that Douangmala entered a knowing and voluntary plea, implicitly finding that Douangmala's knowledge of English did not hinder the plea process. The trial court never advised Douangmala that his plea could result in deportation. At sentencing, the prosecutor alleged that Douangmala was

[1] All references to the Wisconsin Statutes are to the 1997-98 version.

the "leader," "main actor," and "in control of the circumstances." The trial court ultimately sentenced Douangmala to consecutive sentences of ten years for burglary, ten years for robbery, and five years for false imprisonment.

¶3 We first uphold the trial court's refusal to hold an evidentiary hearing on Douangmala's motion to modify sentence. Defendants who seek resentencing for inaccurate information need to show (1) that the information was inaccurate and (2) that the trial court relied on the inaccuracies. *See* ***State v. Johnson***, 158 Wis. 2d 458, 468, 463 N.W.2d 352 (Ct. App. 1990). Trial courts need not hold hearings on such motions if the record conclusively refutes the motion's claims. *See* ***State v. Hereford***, 224 Wis. 2d 605, 611-12, 592 N.W.2d 247 (Ct. App. 1999). Here, Douangmala's motion fails to show that the trial court's sentence was based on an overstated role in the crime. In addition, the transcripts of the sentencing and postconviction hearings show that the trial court placed no weight on Douangmala's specific role, relying instead on other sentencing factors, such as Douangmala's overall culpability, the gravity of the offense, the public's need for protection, the interests of deterrence, and the need for punishment. In any event, Douangmala failed to object to the prosecutor's comments and thereby waived the issue. *See* ***Wirth v. Ehly***, 93 Wis. 2d 433, 443-44, 287 N.W.2d 140 (1980). In short, no evidentiary hearing was necessary on the sentence modification motion.

¶4 Douangmala has shown no blanket need for an interpreter at the plea heairng. At the postsentencing stage, Douangmala needed to show a manifest injustice to withdraw his plea. *See* ***State v. Rock***, 92 Wis. 2d 554, 558-59, 285 N.W.2d 739 (1979). As to the interpreter, the trial court needed to inquire at the plea hearing only if it had cause to believe that Douangmala was incapable of communicating with counsel, understanding testimony, or being understood

himself. *See* WIS. STAT. § 885.37(1)(b); *see also* ***State v. Yang***, 201 Wis. 2d 725, 731, 549 N.W.2d 769 (Ct. App. 1996). We note that Douangmala never moved to withdraw his plea specifically on this ground. He cites it, however, as a supporting argument. In any event, Douangmala has demonstrated none of the above three inabilities. The trial court held an extensive plea colloquy with Douangmala, including a discussion of his ability to understand what was taking place. While Douangmala sometimes gave contradictory answers, the trial court ultimately found that Douangmala was making a knowing and intelligent plea. This implicitly found that Douangmala had a sufficient grasp of English. In short, Douangmala has shown no blanket need for an interpreter.

¶5 Nonetheless, the trial court should have held an evidentiary hearing on Douangmala's claim that he failed to understand the risk of deportation. Trial courts must permit foreign-born defendants to withdraw pleas if they did not understand that their pleas could cause deportation. *See* WIS. STAT. § 971.08(2); *see also* ***State v. Chavez***, 175 Wis. 2d 366, 370-71, 498 N.W.2d 887 (Ct. App. 1993). The legislature has given deportation a unique role in plea hearings, requiring a specific warning on its risks. *See* WIS. STAT. § 971.08(1)(c). Although the trial court never advised Douangmala of deportation risks at the plea hearing, Douangmala stated in his plea questionnaire that he understood them. If Douangmala had not cited problems with English, his plea questionnaire assurances might have sufficed to dispose of his postconviction claims without an evidentiary hearing. Douangmala, however, has made a threshold showing of some degree of language problems, and this shifts the balance of argument in favor of a hearing. If the hearing ultimately reveals that Douangmala had actual knowledge of the risks of deportation, however, his plea will stand. *See* ***Chavez***,

175 Wis. 2d at 370-71. We remand the matter for a hearing on the deportation question.

By the Court.—Judgment affirmed; postconviction orders affirmed in part and reversed in part; cause remanded with directions; no costs to either party.

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