COURT OF APPEALS
DECISION
DATED AND FILED

June 21, 2018

Sheila T. Reiff
Clerk of Court of Appeals

Appeal No. 2017AP741-CR **Cir. Ct. No. 2015CF1244**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAVIEN CAJUJUAN PEGEESE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Rock County: RICHARD T. WERNER and JOHN M. WOOD, Judges. *Affirmed*.

Before Lundsten, P.J., Sherman and Blanchard, JJ.

¶1 PER CURIAM. Javien Pegeese appeals a judgment of conviction and an order denying his postconviction motion. The issue is whether the plea colloquy was defective as to the constitutional rights Pegeese was waiving. We conclude it was not defective, and we affirm.

¶2 Pegeese pled guilty to one count of robbery. He then moved to withdraw that plea after sentencing. The circuit court denied the motion.

¶3 Pegeese argues that the plea colloquy was defective because the circuit court did not specifically discuss with him each of the constitutional rights he was waiving and relied too heavily on the plea questionnaire form. If the circuit court failed to conduct an adequate plea colloquy, and the defendant alleges that he or she in fact did not know or understand the information which should have been provided at the plea hearing, the State bears the burden of showing by clear and convincing evidence that the plea was entered knowingly and voluntarily. ***State v. Bangert***, 131 Wis. 2d 246, 274-76, 389 N.W.2d 12 (1986). The parties agree that this is a question of law that we review without deference to the circuit court.

¶4 As we read Pegeese's argument, it has two main parts. The first part is that, during the plea colloquy discussion of Pegeese's constitutional rights, the court did not specifically refer to the plea questionnaire. As described by Pegeese, the court asked him "earlier in the hearing" if he had signed and understood the plea questionnaire, but the court "failed to refer to the plea questionnaire form in asking about the constitutional rights."

¶5 We reject this part of the argument because it is not a reasonable reading of the record. While Pegeese is technically correct that the court asked him about the questionnaire "earlier in the hearing," his argument appears to imply that some *other* topic was addressed in between the discussion of the questionnaire

and the constitutional rights. What the transcript actually shows, however, is that those topics were not separated.

¶6 The transcript shows that the court asked Pegeese a series of questions in which it confirmed that Pegeese had provided the court with the questionnaire; that it was his signature on the back; that Pegeese read the document before he signed it; that Pegeese understood all of the statements made in that document; and that Pegeese had no questions about it. The court then questioned Pegeese's attorney who told the court that he had read the form to Pegeese and that counsel believed Pegeese understood it.

¶7 Immediately after those questions, the court asked Pegeese, "do you understand the Constitutional Rights you give up when you enter a plea today?" Pegeese said that he did. The court then asked if Pegeese had any questions about those rights, and Pegeese said he did not.

¶8 While Pegeese is correct in asserting that the last two questions, about the constitutional rights, did not themselves contain any reference to the plea questionnaire form, we are satisfied that such a link is present by virtue of the sequence of questions as the court transitioned from the form to the rights. Pegeese argues that, without a specific reference to the rights that were described in the form, it was unclear what rights the court was asking about. We disagree. Read as a whole, the court was clearly asking Pegeese whether he understood the rights that had been described on the form.

¶9 Accordingly, this is not a case where the court simply asked a defendant whether he understood his rights, without any context showing that the defendant had actually been informed about those rights. Instead, it is a case

where the court used the form as part of the colloquy. The remainder of our discussion is about whether the court relied too heavily on the form.

¶10 The second part of Pegeese's argument is based on the idea that, as to the plea colloquy's treatment of constitutional rights, his colloquy was very similar to the one that he asserts was held inadequate in ***State v. Hoppe***, 2009 WI 41, 317 Wis. 2d 161, 765 N.W.2d 794. He asserts: "The plea colloquy here was deficient like in ***Hoppe*** because the court failed to explain the constitutional rights to Mr. Pegeese and failed to explain to Mr. Pegeese that he was waiving them by entering his plea."

¶11 As we understand the State's response, it appears that both parties regard ***Hoppe*** as having held that the plea colloquy in that case was deficient as to the discussion of constitutional rights. However, a close reading of the opinion shows otherwise.

¶12 The ***Hoppe*** opinion noted that deficient treatment of the constitutional rights was one of several colloquy deficiencies that Hoppe argued were present. *See* ***id.***, ¶¶19-23. The court then summarized the colloquy itself and the court of appeals decision, ***id.***, ¶¶24-28, and made statements of law setting forth its view of the proper role of the plea form. ***Id.***, ¶¶29-32. The court then began applying those legal views to the case before it. In ¶33, the court concluded that the circuit court relied excessively on the form.

¶13 It is the next paragraph that is key, however. It begins: "At least with respect to *the first two allegations* in the defendant's ***Bangert*** motion, we therefore agree with the defendant that his motion does make a prima facie showing ...." ***Id.***, ¶34 (emphasis added). That paragraph then goes on to identify those two allegations, namely, that the court did not satisfy its duties as to whether

promises or threats were made in connection with the plea, or as to the range of punishments. The court did *not* hold that the colloquy was deficient with respect to the discussion of the constitutional rights being waived.

¶14 Later in the opinion, after concluding that Hoppe was entitled to an evidentiary hearing as to those two defects in the colloquy, the court reviewed the record of the evidentiary hearing to decide whether the State met its burden. When starting that review, the court stated: "For purposes of this part of the opinion, we assume without deciding that *all four plea colloquy defects* that the defendant identifies in his ***Bangert*** motion do exist." ***Id.***, ¶46 (emphasis added). The court held that the State met its burden as to all four alleged defects. ***Id.***, ¶57.

¶15 Thus, contrary to the position of both parties in this appeal, it is clear that the court in ***Hoppe*** did not conclude that the plea colloquy before it was defective with respect to constitutional rights. Instead, the court did not reach a decision on that point. It assumed without deciding that such a defect was present, and then held that the State met its burden. Therefore, Pegeese's argument that he should prevail because his colloquy is very similar to the one in ***Hoppe*** must fail because in ***Hoppe*** the court did not hold the colloquy discussion of constitutional rights to be inadequate.

¶16 Looked at in that light, ***Hoppe*** provides little support for Pegeese. Pegeese is arguing, in essence, that a colloquy is defective unless the court itself enumerates or otherwise specifies or explains each right being waived. Neither ***Hoppe*** nor any other case law that we are aware of imposes such a requirement.

¶17 In summary, the plea colloquy here was adequate as to the constitutional rights. The court properly used the plea questionnaire form to

establish context about those rights, and then asked Pegeese directly whether he understood the rights that he was waiving by pleading guilty.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2015-16).