COURT OF APPEALS
DECISION
DATED AND FILED

November 7, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0668-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

STEVEN M. WRZESINSKI,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Lincoln County: J. MICHAEL NOLAN, Judge. *Affirmed.*

Before Hoover, P.J., and Peterson and Deininger, JJ.

¶1 PER CURIAM. Steven Wrzesinski pled guilty and was convicted of two counts of battery to a child, contrary to WIS. STAT. § 948.03(2)(b).[1]

[1] All statutory references are to the 1997-98 version unless otherwise noted.

Wrzesinski, a seventeen-year-old at the time, was involved in a physical altercation with a seventeen-year-old who was three months older than Wrzesinski and a sixteen-year-old. After sentencing, Wrzesinski filed a motion to withdraw his guilty pleas. The trial court denied his motion and he appeals.

¶2 Wrzesinski now argues that he should be allowed to withdraw his plea because treating him as an adult while at the same time treating one older than he as a child violates his rights to equal protection under art. I, § 1, of the Wisconsin Constitution and due process under the Fourteenth Amendment to the United States Constitution. We determine that Wrzesinski failed to argue or demonstrate his constitutional claims in the circuit court and affirm the convictions.

¶3 Wrzesinski asserted without analysis in his postconviction motion brief that "Wisconsin Statute § 948.03(2)(b) was never intended to be used to prosecute children in altercations with children, particularly when the victims are older than the defendants. The prosecution has misinterpreted and misused the statute."

¶4 At the hearing, he contended that "the legislature chang[ed] the definition of a child for one purpose and not the other and, therefore, caus[ed] an inconsistency which in this instance would, in fact, and did, in fact, result in a conviction which is inconsistent with the law." Recognizing that pleading guilty waives many objections to a conviction, he argued that waiver did not apply to constitutional claims. "I think that this rises to the issue of constitutional due process because of the way it is interpreted."

¶5 Wrzesinski conceded that the legislature had the right to lower to seventeen the age a person can be criminally prosecuted as an adult. Wrzesinski

agrees that even given the apparent inconsistency he asserts, a seventeen-year-old could be considered to have battered a child if the child were sixteen years old.[2]

¶6 The trial court denied the motion to withdraw the pleas finding that

> it doesn't rise to the level of a constitutional issue as far as the Court can see and, secondly, the legislature has the right and prerogative and authority to change the age at which people will be prosecuted for crimes even though they continue to define those persons for other purposes as children ….

A. PLEA WITHDRAWAL

¶7 Generally, on a motion to withdraw a plea, a defendant must show by clear and convincing evidence that withdrawal is necessary to correct a manifest injustice. *See* ***State v. Krieger***, 163 Wis. 2d 241, 249, 471 N.W.2d 599 (Ct. App. 1991). Examples of "manifest injustice" include:

> (1) ineffective assistance of counsel; (2) the defendant did not personally enter or ratify the plea; (3) the plea was involuntary; (4) the prosecutor failed to fulfill the plea agreement; (5) the defendant did not receive the concessions tentatively or fully concurred in by the court, and the defendant did not reaffirm the plea after being told that the court no longer concurred in the agreement; and, (6) the court had agreed that the defendant could withdraw the plea if the court deviated from the plea agreement.

Id. at 251 n.6 (citing the ABA STANDARDS FOR CRIMINAL JUSTICE § 14-2.1(b)(ii)(A) through (F) (2d ed. supp. 1986)). Motions for plea withdrawal are addressed to the sound discretion of the circuit court, and this court will only reverse if that court erroneously exercised its discretion. *See* ***id.*** at 250.

[2] This concession disposes of his challenge to the conviction related to the 16-year-old. We do not address it further.

¶8 Wrzesinski cites three cases and a state statute in his motion to withdraw the guilty pleas, but offers no discussion of their significance. Although these cases discuss the "manifest injustice" standard, he ignores any discussion of it. He does not allege that a manifest injustice has occurred, let alone allege facts that would permit the court to so find by clear and convincing evidence. Neither the trial court nor this court is obligated to develop his arguments for him. *See* ***Barakat v. DHSS***, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995). He has not proved that the trial court erroneously exercised its discretion under the standard analysis applying to plea withdrawals. Nevertheless, he makes two constitutional arguments on appeal that we address next.

B. DUE PROCESS AND EQUAL PROTECTION

¶9 To preserve claims, a defendant must raise all grounds for postconviction relief at the first postconviction hearing, unless there is some sufficient reason for not doing so. *See* WIS. STAT. § 974.06(4); ***State v. Escalona-Naranjo***, 185 Wis. 2d 168, 184-85, 517 N.W.2d 157 (1994). A party who appeals has the burden to establish "by reference to the record, that the issue was raised before the circuit court." ***State v. Caban***, 210 Wis. 2d 597, 604, 563 N.W.2d 501 (1997). "By limiting the scope of appellate review to those issues that were first raised before the circuit court, this court gives deference to the factual expertise of the trier of fact, encourages litigation of all issues at one time, simplifies the appellate task, and discourages a flood of appeals." ***Id.*** at 604-05. If a defendant fails to properly present an issue, even a constitutional right violation, to the circuit court, it will not be reviewed on appeal. *See* ***id.*** at 604.

¶10 Wrzesinski contends that his postconviction argument states constitutional claims of error. In his motion papers, however, Wrzesinski failed to

implicate either the state or the federal constitution. Although he made a vague reference to a possible due process claim, he never afforded the trial court the opportunity to review the case in terms of equal protection. Further, he provides no reason why he did not advance an equal protection claim in the trial court. Wrzesinski has not preserved his right to pursue such a claim in this court. *See* ***id.*** Consequently, we do not discuss his equal protection claim further.

¶11 In the trial court, Wrzesinski asserted that this case "rises to the issue of constitutional due process because of the way [the statutes are] interpreted." He offered no other due process analysis either in the trial court or before this court. "Simply to label a claimed error as constitutional does not make it so, and we need not decide the validity of constitutional claims broadly stated but never specifically argued." ***State v. Scherreiks***, 153 Wis. 2d 510, 520, 451 N.W.2d 759 (Ct. App. 1989) (citations omitted). Wrzesinski merely raises a due process error, but does not develop his argument. He makes no attempt to tie his asserted statutory inconsistency to a due process violation. We will not abandon our neutrality to develop his arguments for him. *See* ***Barakat***, 191 Wis. 2d at 786.

¶12 Finally, Wrzesinski repeatedly argues that he was charged with the crime because he "won" the fight. He argues that "[t]here is no rational basis to support defining a child involved in a fight as a victim if they loose [sic] and therefore a juvenile and a perpetrator if they win and therefore an adult." There is, however, no evidence that he was charged as an adult because he "won" the fight. Additionally, multiple parties to a physical fight can each be charged if they violate the law, regardless who "wins." Whether the other individuals were charged and if not, why not, is not before us.

¶13 Wrzesinski has not shown a manifest injustice requiring plea withdrawal. He did not preserve his equal protection or due process claims. The trial court properly exercised its discretion when it denied his motion to withdraw his plea. Accordingly, we reject his appeal and affirm the trial court.

By the Court.—Judgment and order affirmed.

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