

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 7, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1493-CR
STATE OF WISCONSIN**

Cir. Ct. No. 99-CF-38

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONALD D. LAUFER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marquette County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

Before Roggensack, Deininger and Lundsten, JJ.

¶1 PER CURIAM. Donald Laufer appeals a judgment convicting him of fifth-offense operating while intoxicated (OWI). The issue is whether the trial court properly denied his collateral challenge to a prior OWI conviction used to enhance the charge. We affirm.

¶2 One of the four convictions supporting the fifth-offense allegation was entered in 1994, following Laufer's waiver of counsel and subsequent guilty plea. In this proceeding, Laufer argued that the 1994 conviction should not count against him because he did not knowingly, intelligently and voluntarily waive his right to counsel in that proceeding. The trial court held otherwise, resulting in this appeal.

¶3 A defendant may collaterally attack an OWI conviction used to enhance the sentence for a subsequent OWI conviction, on proof that the defendant did not knowingly and voluntarily waive his right to counsel in the earlier proceeding. *State v. Peters*, 2001 WI 74, ¶4, 244 Wis. 2d 470, 628 N.W.2d 797. Because Laufer waived counsel in 1994, the applicable standard is that which is set forth in *Pickens v. State*, 96 Wis. 2d 549, 563-64, 292 N.W.2d 601 (1980). See *Peters*, 2001 WI 74 at ¶¶20-21. Under that standard, the waiver is valid if the record shows a deliberate choice to proceed without counsel, and the defendant is aware of the difficulties and disadvantages of self-representation, of the seriousness of the charge and of the range of possible penalties. *Pickens*, 96 Wis. 2d at 563-64. Under the *Pickens* standard, we review the totality of the record to determine the waiver's validity. *Peters*, 2001 WI 74 at ¶21. We review *de novo* the issue of whether an individual's constitutional rights have been denied. *State v. Klessig*, 211 Wis. 2d 194, 204, 564 N.W.2d 716 (1997).

¶4 Laufer validly waived his right to counsel in the 1994 proceeding. In that case, he stood charged with several traffic offenses following a one-car accident. The evidence on the OWI charge included a blood-alcohol reading of .20 percent. Laufer appeared at his plea hearing pro se. He unequivocally declared that he did not want or need representation because he was ready to accept the State's offer to drop all other charges in exchange for his OWI plea.

His mental capacity and awareness at the time are not in question. Neither is his understanding of the charge and the potential consequences. The only basis for his present claim of involuntary waiver is the following question and answer.

THE COURT: You understand a lawyer might find that you have a defense to the charges and that there are facts which might result in a lighter penalty? Allowing you to take such matters into consideration in deciding whether or not you want a lawyer to represent you; do you understand that a lawyer may be of help to you?

LAUFER: No.

Laufer now interprets his “No” answer as, “No, I do not understand how a lawyer may help me.” However, it is plain in the context of the hearing that he meant, instead, “No, I do not believe a lawyer would help me because I am satisfied with the disposition that has been offered to me.” In other words, Laufer’s answer conveyed a knowing and voluntary decision, with full understanding of the benefits a lawyer might provide him after he had been offered and accepted a plea bargain that was satisfactory to him.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (1999-2000).

