COURT OF APPEALS
DECISION
DATED AND FILED

March 15, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0367-CR **Cir. Ct. No. 02CF007198**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RENO D. COFFIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARTIN J. DONALD, Judge. *Affirmed*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 WEDEMEYER, P.J. Reno D. Coffin appeals from a judgment entered after he pled guilty to armed robbery, while using a dangerous weapon. He also appeals from an order denying his motion to withdraw his guilty plea. Coffin claims that the trial court erred in summarily denying his motion without conducting an evidentiary hearing. Because the record conclusively refutes

Coffin's claim that his plea was involuntary and that he received ineffective assistance, he was not entitled to an evidentiary hearing; therefore, we affirm.

BACKGROUND

¶2 Coffin was charged with armed robbery, contrary to WIS. STAT. § 943.32(1)(b), (2) (2003-04),[1] which carries a maximum sentence of sixty years. Coffin was charged for an incident that occurred on December 26, 2002. The criminal complaint filed against Coffin states that he used a weapon to take another person's vehicle. The complaint also states that Coffin admitted to taking the car, but denied using a weapon. On December 30, 2002, Coffin appeared in court with his attorney, Jeff Schwarz, and was informed that the maximum penalty for the crime with which he was charged was sixty years. One week later, Coffin again appeared in court with Schwarz and entered a not guilty plea to the charge. Attorney Elvis Banks substituted for Schwarz and began his representation at a scheduling conference on January 23, 2003.

¶3 Coffin appeared with Banks for a plea hearing on February 27, 2003. At that time, Coffin stated he wished to plead guilty to the charge. Coffin acknowledged that he faced the sixty-year maximum for the crime. Coffin further affirmed that the State could argue for a fifteen-year sentence with the decision for the breakdown belonging to the court; the defense was free to argue for any length of sentence it believed was appropriate. The parties confirmed the plea agreement and the trial court re-iterated to Coffin that it was not bound by the parties' plea agreement on sentencing terms. Coffin again affirmed that he understood. After

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

reviewing the plea colloquy with Coffin, Coffin maintained that he understood the contents, that everything was correct and accurate, and that no one had made any threats or promises to him. The court then found that the plea was entered freely, voluntarily and intelligently.

¶4 Banks did not appear at the sentencing hearing on May 2, 2003, and the case was adjourned for a status conference. Attorney Schwarz was reassigned to the case and appeared at the status conference on May 12, 2003. Sentencing was then rescheduled for May 28, 2003. At the sentencing hearing on May 28, 2003, the trial court again informed Coffin that he faced up to sixty years' imprisonment. The trial court ultimately imposed a fourteen-year sentence, with six years of initial confinement and eight years of extended supervision. On November 20, 2003, Coffin, by new counsel, Michael Zell, filed a motion to withdraw his guilty plea. This motion was denied without an evidentiary hearing. A written decision and order was entered on January 7, 2004. Coffin now appeals.

DISCUSSION

¶5 The question for review in this case is whether Coffin was entitled to an evidentiary hearing on his motion to withdraw his guilty plea. Coffin claims that his trial counsel, Attorney Banks, promised him no more than three years of incarceration and further informed him that he was likely to receive probation. Coffin further alleges that trial counsel's prediction rendered his guilty plea involuntary, and also constituted ineffective assistance of counsel. We reject these arguments and affirm the trial court's ruling. The standards governing evidentiary hearings in this context were addressed in ***Nelson v. State***, 54 Wis. 2d 489, 195 N.W.2d 629 (1972):

> [I]f a motion to withdraw a guilty plea after judgment and sentence alleges facts which, if true, would entitle the defendant to relief, the trial court must hold an evidentiary hearing. However, if the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

Id. at 497-98; *see also* ***State v. Bentley***, 201 Wis. 2d 303, 309-10, 548 N.W.2d 50 (1996) (affirming basic ***Nelson*** standard, but clarifying standard of review).

¶6 In order for a defendant to withdraw a guilty plea after sentencing, the defendant must show that a manifest injustice would result if the withdrawal were not permitted. *See* ***State v. Reppin***, 35 Wis. 2d 377, 385-86, 151 N.W.2d 9 (1967). The defendant bears the burden of proving a manifest injustice by clear and convincing evidence. ***State v. Booth***, 142 Wis. 2d 232, 237, 418 N.W.2d 20 (Ct. App. 1987) (citing ***Reppin***, 35 Wis. 2d at 385). A manifest injustice can be proven when the plea is not knowingly, voluntarily or intelligently made, ***State v. Giebel***, 198 Wis. 2d 207, 212, 541 N.W.2d 815 (Ct. App. 1995), or if there was ineffective assistance of counsel, *see* ***Bentley***, 201 Wis. 2d at 311. However, "[a] defendant must do more than merely allege that he would have pled differently; such an allegation must be supported by objective factual assertions." ***Id.*** at 313 (footnote omitted).

¶7 The trial court declined to conduct an evidentiary hearing because the record conclusively demonstrated that Coffin entered his plea knowingly, voluntarily and intelligently. The trial court also found that because the record clearly indicated that Coffin was advised by the court about the maximum potential sentence and that the court was not bound by the plea recommendations, and that Coffin understood these facts, Coffin cannot now seek plea withdrawal on

the basis that his counsel predicted that a lesser sentence would be imposed. The trial court did not err in summarily denying Coffin's motion.

¶8 Coffin alleges that his counsel's representations coerced him into pleading guilty, resulting in an involuntary plea. He rests this claim on trial counsel's prediction as to what sentence would be imposed. Coffin asserts that his counsel told him that he would not receive more than three years' incarceration and he would likely only receive probation. In fact, Coffin was sentenced to fourteen years' imprisonment, with six years of initial confinement and eight years of extended probation. He argues that he is entitled to an evidentiary hearing on this claim. We reject his contention.

¶9 The record in this case clearly reflects that Coffin was repeatedly informed by the court regarding the maximum potential punishment for the crime and that the trial court was not bound by the recommendations of counsel or the plea agreement. Further, Coffin acknowledged that he was freely pleading guilty and was not doing so because he was promised a certain outcome.

¶10 It appears that his claim arises from his disappointment that the trial court imposed a longer sentence than what defense counsel predicted. However, "disappointment in the eventual punishment imposed is no ground for withdrawal of a guilty plea." ***Booth***, 142 Wis. 2d at 237. Also, without facts to support the allegation that Coffin would have pled differently without the misinformation of his attorney, his allegations amount to "merely a self-serving conclusion." ***Bentley***, 201 Wis. 2d at 316. Coffin has failed to provide this court with any facts which, if true, would entitle him to relief. He does not challenge the accuracy of the plea colloquy or claim that his counsel instructed him to lie in answering the trial court's questions. His only allegations are that his counsel indicated what

sentence counsel thought the trial court would impose and why. Trial counsel's statements, in light of the undisputed and unchallenged plea colloquy, do not raise a question of fact sufficient to require an evidentiary hearing.

¶11 Coffin also claims the trial court should have conducted an evidentiary hearing on his claim that his trial counsel's sentencing predictions constituted ineffective assistance. Specifically, Coffin claims Banks provided ineffective assistance for promising Coffin that he would not serve the time recommended by the State, and to disregard the plea agreement. The trial court summarily rejected this claim. We conclude that the trial court's decision was correct.

¶12 There is a two-pronged test for ineffective assistance of counsel that the defendant is required to prove: (1) deficient performance, and (2) prejudice. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). The defendant must show that specific acts or omissions by counsel were "outside the wide range of professionally competent assistance" in order to prove deficient performance. ***Id.*** at 690. There is a presumption that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." ***Id.*** In order to prove the second prong, the defendant must show that counsel's errors were so serious that the defendant was deprived of a fair trial and a reliable outcome. ***Id.*** at 687. The defendant must also show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." ***Id.*** at 694.

¶13 This court need not address both ***Strickland*** prongs, because the defendant fails to make a sufficient showing on either one. ***Id.*** at 697. Coffin

argues that counsel was deficient because Attorney Banks informed Coffin that he would receive a maximum of three years' incarceration and he would likely only receive probation. Coffin also alleges that Attorney Banks told him this outcome was likely because he was an African-American attorney and the judge and prosecutor were also African-American. We reject Coffin's contention that his counsel's conduct constituted ineffective assistance of counsel because the record conclusively demonstrates that these alleged instances of ineffective assistance did not prejudice Coffin.

¶14 The record reflects that the trial court repeatedly informed Coffin that it was not bound by the plea agreement and could impose the maximum sentence of sixty years if it chose to do so. Further, Coffin was specifically told that he could not rely on any prediction by trial counsel. Coffin acknowledged that he was not threatened or coerced into pleading guilty and no promises had been made to secure his guilty plea. The trial court determined that in light of the authoritative advisements of the court, Coffin could not reasonably have regarded his counsel's representations as an assurance of the sentence he would receive.

¶15 Moreover, Coffin failed to allege any factual assertions which would allow this court to assess how he was prejudiced by the misinformation. *See* ***Bentley***, 201 Wis. 2d at 316. Coffin does not allege that he placed any emphasis on his trial counsel's assertions or that he would not have pled guilty had the circumstances been any different. He does not deny that he is guilty; and, in fact, affirmed that he entered a guilty plea because he was guilty.

¶16 Thus, Coffin has failed to assert sufficient allegations to require an evidentiary hearing under the ***Nelson/Bentley*** test. Because Coffin has not alleged facts which, if true, would entitle him to a hearing on his motion, the trial court

was not required to hold a hearing. The trial court properly exercised its discretion in not granting a hearing. Accordingly, Coffin's claim is meritless, and we affirm the trial court's judgment and order.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.