COURT OF APPEALS
DECISION
DATED AND RELEASED

SEPTEMBER 6, 1995

No. 95-0579-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TRAVIS BLANKS,

Defendant-Appellant.

APPEAL from an order of the circuit court for Racine County: EMILY S. MUELLER, Judge. *Affirmed*.

ANDERSON, P.J. Travis Blanks appeals from an order of the circuit court denying his postconviction motion for the withdrawal of his no contest plea on grounds that the plea was coerced. Blanks asserts that the plea was not voluntarily entered, and the trial court abused its discretion in refusing to grant the motion. We affirm the trial court's decision because Blanks has not met the standard for proving that a manifest injustice had occurred in the court proceedings, and a defendant's right to counsel is not an unlimited one.

On September 1, 1993, Blanks was charged with criminal damage to property as a habitual offender for damaging the inside of a prison van from the Racine Correctional Institution that was transporting him to a court hearing in Dodge County. The case went to trial on July 18, 1994, after two earlier adjustments and the withdrawal of three attorneys. Arthur Nathan represented Blanks at trial. On the day of the trial, Blanks requested a new attorney to represent him, on the grounds that his attorney had allegedly threatened him and was attempting to get him to enter a guilty plea instead of having a jury trial. The court advised Blanks to either proceed to jury trial with his appointed attorney or represent himself. On the next trial day, Blanks entered a no contest plea to the charge and was sentenced to thirty months in the Wisconsin State Prison to run consecutive to the time that he was already serving on other charges. Subsequent to the judgment of conviction, Blanks filed a notice of intent to pursue postconviction relief through his attorney, Nathan. Nathan then withdrew from the current case and three other pending cases in which he was representing Blanks.

Subsequently, Blanks filed a motion to modify the sentence and sought to withdraw the July 19, 1994, no contest plea on the grounds that the plea was coerced. In the alternative, the motion sought a concurrent sentence in place of the consecutive sentence, on the grounds that new information was discovered regarding the subsequent convictions. This motion was denied by the circuit court. Blanks then filed a notice of appeal.

The supreme court in ***Dudrey v. State***, 74 Wis.2d 480, 483, 247 N.W.2d 105, 107 (1976), held that the rule for postsentence withdrawal of a plea

is only to correct a manifest injustice. A plea of guilty that is not knowingly, voluntarily or intelligently entered creates a manifest injustice. ***State v. Harrell***, 182 Wis.2d 408, 414, 513 N.W.2d 676, 678 (Ct. App. 1994). Whether a defendant has made a prima facie showing that his or her plea was entered involuntarily or unknowingly is a question of law which is reviewed de novo. ***State v. James***, 176 Wis.2d 230, 237, 500 N.W.2d 345, 348 (Ct. App. 1993).

Where the record supports the trial court's finding that a plea is knowingly, voluntarily and intelligently entered into, an appellate court will not overturn the discretion of the trial court. In ***Nelson v. State***, 54 Wis.2d 489, 498-99, 195 N.W.2d 629, 633-34 (1972), the court held that a defendant was not entitled to a hearing on his motion for postconviction relief where the defendant had asserted that his attorney enticed him to plead guilty or get ten years, and then gave him fifteen minutes to make up his mind. The record revealed that the defendant stated he was making his plea freely and voluntarily, and that he understood the nature of the charge and the consequences of the plea. The procedures of the trial court had satisfied the requirements for a valid plea. ***Id.***

In the current case, the record does not make a prima facie showing that the trial court misused its discretion in finding that the exchange between Blanks and Nathan did not rise to the level of manifest injustice. In addition to the court's colloquy with Blanks inquiring into whether his plea was knowingly, voluntarily and intelligently entered into, Blanks apologized to the court for his conduct the first day of trial and openly stated that he wanted to plead no contest at that time. An apology is not required by a formal questioning procedure, but came from Blanks on his own initiative. The trial

court also found that the completed plea questionnaire was evidence that Blanks entered the plea of his own will. In addition, Blanks had represented himself in his past court proceedings as someone not afraid to question the conduct of the court or his attorneys. The court had satisfied all of the requirements for accepting a plea and had no reason to further inquire into Blanks's decision.

Because of the multitude of factors that may play a part in a defendant's decision to plead guilty, courts are reluctant to overturn a trial court's finding of fact. In ***Seybold v. State***, 61 Wis.2d 227, 235, 212 N.W.2d 146, 150 (1973), the supreme court noted that "[e]ven if the defendant did plead guilty partly because of his belief that his wife would receive probation if there was no trial and all the defendants admitted their guilt, this certainly was not the only factor which motivated his plea. The proof against him was overwhelming."

The supreme court extended the authority of the trial court to make findings of fact in ***Jones v. State***, 71 Wis.2d 750, 755, 238 N.W.2d 741, 743 (1976). The court found that the trial court did not misuse its discretion when it denied postconviction relief to a defendant when her decision to plead guilty was influenced by the drug Thorazine that was administered to her on the same day. The court held that the plea was valid because the record supported the contention that the plea was made knowingly and voluntarily, with no evidence of impairment. In addition, the Seventh Circuit Court of Appeals has said that under the United States Constitution, a defendant's plea of guilty does not have to be supported by strong evidence of a factual basis for the plea, but rather

need only represent a voluntary and intelligent choice among alternate courses of action open to the defendant. ***Higgason v. Clark***, 984 F.2d 203, 207 (7th Cir.), *cert. denied*, 113 S. Ct. 2974 (1993).

Blanks had alternate courses of action open to him after the first day of trial. This court cannot go back to analyze all of the possible reasons for Blanks's decision to plead no contest, and therefore the trial court's finding of fact should not be overturned when the record supports it. The trial court noted that the State had a strong case against Blanks after the first trial day, and that Blanks entered his plea intelligently, voluntarily and with knowledge of the consequences on the next day of trial.

In addition, a defendant does not have an unlimited right to court-appointed counsel. A defendant cannot insist on this right where it will impede the trial court in the control of its calendar or deprive the trial court of the inherent power to conduct its business in a prompt and efficient manner. ***Phifer v. State***, 64 Wis.2d 24, 30, 218 N.W.2d 354, 357 (1974). In addition, the right to counsel does not sanction a defendant's attempts to manipulate that right in an effort to thwart and obstruct the orderly procedure for trial or to interfere and disrupt the administration of justice. ***Rahhal v. State***, 52 Wis.2d 144, 147-48, 187 N.W.2d 800, 803 (1971).

The premise that a defendant does not have an unlimited right to counsel is also supported by the rule that a defendant is not always at liberty to discharge his or her attorney. In ***State v. Clifton***, 150 Wis.2d 673, 684, 443 N.W.2d 26, 30 (Ct. App. 1989), the court of appeals held that it was not

reversible error when the trial court refused to allow substitution of counsel for an indigent on the second day of trial, when counsel was adequately prepared for trial and the defendant failed to show good cause for substitution.

Blanks had three attorneys before Nathan, and given his dissatisfaction with all of them, he has not made a prima facie showing that Nathan was entirely at fault and he was entitled to another attorney. The trial court was within its discretion when it gave Blanks a choice to continue with Nathan or represent himself at that point. The fact that Nathan did withdraw from representing Blanks in his other cases does not necessarily prove Nathan was acting in bad faith, but is a likely result of the complete breakdown of communication after the first day of trial. This court has previously held that defense counsel may be permitted to withdraw when there is a complete breakdown in communication that will substantially harm the defendant. *See* ***Clifton***, 150 Wis. 2d at 684, 443 N.W.2d at 30. This conclusion is mandated because the relationship between a defendant and defense counsel is a highly confidential one that demands personal faith and confidence. ***Phifer***, 64 Wis.2d at 30, 218 N.W.2d at 357. This case is representative of a complete breakdown in the relationship between counsel and client, and Nathan's withdrawal was a likely and necessary outcome, and ultimately in the best interests of both the defendant and counsel.

By the Court.—Order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.