COURT OF APPEALS
DECISION
DATED AND FILED

August 19, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 03-3232-CR
03-3233-CR
03-3234-CR

Cir. Ct. Nos. 01CF001788
01CF001847
01CM004483

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY M. HARRIS,

DEFENDANT-APPELLANT.

APPEAL from judgments and order of the circuit court for Dane County: DAVID T. FLANAGAN, Judge. *Affirmed.*

Before Deininger, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. Anthony Harris appeals judgments convicting him on four criminal charges, including three felonies. He also appeals an order denying postconviction relief. He raises various issues, but we affirm on all.

¶2 Harris entered no contest pleas, and the State dismissed several charges in exchange for the pleas. There was no agreement as to sentencing, however. On the most serious charge, armed robbery, Harris received ten years initial confinement followed by ten years of extended supervision. He received lesser concurrent sentences on the remaining counts.

¶3 Harris requested and received appointment of postconviction counsel. However, after he and counsel disagreed on the merits of a postconviction proceeding, Harris chose to pursue postconviction relief pro se. The trial court, without a hearing, denied his postconviction motion, which included an ineffective assistance of trial counsel claim. On appeal, he raises the following issues: (1) whether errors at the preliminary hearing entitle him to relief from his conviction; (2) whether his pleas were knowing, voluntary and intelligent; (3) whether the trial court had an adequate factual basis for accepting the pleas; (4) whether he was sentenced on incorrect information contained in the presentence investigation (PSI) report; and, (5) whether he received effective assistance from trial counsel and from appellate counsel.

¶4 Harris asserts that he was bound over without the required probable cause determination, and that the judge who presided over his preliminary hearing (but no subsequent proceedings) was biased against him. However, a defendant may not receive appellate review of alleged preliminary hearing errors after conviction. *See* ***State v. Webb***, 160 Wis. 2d 622, 628, 467 N.W.2d 108 (1991). Additionally, Harris waived the preliminary hearing issues he now raises when he entered his plea. *See* ***Mack v. State***, 93 Wis. 2d 287, 293, 286 N.W.2d 563 (1980).

¶5 There was an adequate factual basis for Harris' pleas. The complaints against Harris set forth a detailed account of his offenses, and of the

evidence against him. The trial court may use the complaint to establish a factual basis, ***State v. Black***, 2001 WI 31, ¶12, 242 Wis. 2d 126, 624 N.W.2d 363, and properly did so in this case. Additionally, at the plea hearing, trial counsel stipulated to an ample factual basis for the pleas. Harris also personally stipulated that the State had sufficient evidence to convict him. Although Harris did not expressly admit his guilt, the trial court need not elicit a confession from the defendant before accepting the plea. ***State v. Thomas***, 2000 WI 13, ¶¶18-24, 232 Wis. 2d 714, 605 N.W.2d 836.

¶6 The record does not support Harris' claim that the trial court conducted an inadequate plea colloquy. He contends that the trial court failed to adequately explain the nature of the charges against him. That is simply not true. During the plea colloquy the court went over each of the elements of each of the offenses. To successfully withdraw a plea, the defendant must first show that during the plea hearing the trial court failed to provide the information required under WIS. STAT. § 971.08 (2001-02),[1] and ***State v. Bangert***, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). *See* ***State v. Hampton***, 2002 WI App. 293, ¶8, 259 Wis. 2d 455, 655 N.W.2d 131, *aff'd*, 2004 WI 107, __Wis. 2d__, 683 N.W.2d 14. Harris has utterly failed to make that showing as to the trial court's obligation to describe the elements of the offenses.

¶7 The record also does not support Harris' contention that the trial court sentenced him on inaccurate information. The information in question was his mother's statement to the presentence investigator that she thought he should

[1] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

serve some time in prison. Harris alleges that the investigator incorrectly reported his mother's opinion. He points to her subsequent letter to the trial court in which she asked for leniency. There is no indication that the trial court relied on the PSI statement in sentencing Harris. The court never mentioned it, while noting his mother's recommendation for leniency in her letter. In any event, Harris failed to identify the alleged error in the PSI at the sentencing hearing, and therefore conceded the accuracy of the PSI. *See* ***State v. Peters***, 192 Wis. 2d 674, 697, 534 N.W.2d 867 (Ct. App. 1995).

¶8 The trial court properly rejected Harris' ineffective assistance of trial counsel claim without a hearing. Harris based the claim on allegations that counsel coerced him into his pleas, and that the agreement counsel negotiated contained no cap on the State's sentencing recommendation. The trial court may deny an ineffectiveness claim without a hearing if it is based on conclusory allegations rather than specific facts, or if the record conclusively shows that the defendant is not entitled to relief. ***State v. Bentley***, 201 Wis. 2d 303, 309-11, 313-18, 548 N.W.2d 50 (1996). Here, the allegations Harris made concerning counsel's alleged coercion were conclusory only. The fact that the plea bargain contained no sentencing cap does not create an inference of ineffectiveness. There is no authority for the proposition that counsel must negotiate for a cap as part of a plea bargain. The record conclusively demonstrates that Harris received significant concessions in exchange for his pleas, and it was explained to him before entering his pleas, on the record, that the bargain did not include a sentencing cap.

¶9 Finally, Harris also alleges the ineffectiveness of his discharged postconviction counsel. He alleges, in conclusory terms, that counsel refused to

pursue any of the "many significant issues" that Harris wanted to raise on appeal. He does not, however, identify those issues, and none are apparent to this court. Moreover, we note that if Harris is referring to the claims he raised in his pro se appeal, which we have concluded all lack merit, his counsel was not deficient for not pursuing them, and neither was Harris prejudiced thereby. Further proceedings on the claim against appellate counsel are therefore unnecessary. *See* ***Bentley***, 201 Wis. 2d at 309-11, 313-18.

By the Court.—Judgments and order affirmed.

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