COURT OF APPEALS
DECISION
DATED AND FILED

September 8, 2010

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2009AP1718-CR **Cir. Ct. No. 2006CF3847**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

REYMOND GOLLIER, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: WILLIAM W. BRASH, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Reymond Gollier, Jr., appeals a judgment convicting him of second-degree reckless homicide and first-degree recklessly endangering safety, both while armed. He also appeals an order denying his motion for postconviction relief. He argues that: (1) his arrest was invalid; (2) the authorities did not hold a probable cause determination within forty-eight hours of

his arrest as required by ***County of Riverside v. McLaughlin***, 500 U.S. 44, 56 (1991); (3) the State prematurely filed the information; (4) the circuit court erred when it accepted his plea because it misinformed him about the potential punishment he faced; and (5) he received ineffective assistance of counsel. We affirm.

¶2 Gollier first argues that his arrest was invalid. "A law enforcement officer may arrest a person when … [t]here are reasonable grounds to believe that the person is committing or has committed a crime." WIS. STAT. § 968.07(1)(d). Before the arrest, Gollier was identified as the shooter by two of the victims. After the identifications were made, the police sent out an alert on the Milwaukee Police Department teletype indicating that Gollier was a suspect in a homicide. The police went to the home of Elizabeth Cancel and saw Gollier (inside the residence) through the window. The police asked Cancel, who owned the home, for permission to search her home, which Cancel granted both orally and in writing. The arrest was valid because there were reasonable grounds to believe that Gollier had committed a crime, as required by § 968.07(1)(d), and the police had permission to be in the home where they arrested him. We reject Gollier's argument that his arrest was invalid.

¶3 Gollier next argues that the authorities failed to make a judicial determination of probable cause within forty-eight hours of his arrest as required by ***Riverside***, 500 U.S. at 56. This argument is factually inaccurate. Gollier was arrested on July 25, 2006, at 12:55 a.m., and a probable cause determination was made on July 26 at 1:55 p.m., within forty-eight hours as required by ***Riverside***. We reject this argument.

¶4 Gollier next argues that the State prematurely filed the information, thus depriving the circuit court of subject-matter jurisdiction over him. He points to WIS. STAT. § 971.01(2), which provides, "The information shall be filed with the clerk within 30 days after the completion of the preliminary examination or waiver thereof …. Failure to file the information within such time shall entitle the defendant to have the action dismissed without prejudice." The circuit court record entries show that the information was filed contemporaneously with the preliminary examination hearing, but a comment by the prosecutor at the hearing suggested that the information had been filed before the hearing began. Regardless, nothing in § 971.01(2) prohibits the State from filing the information with the clerk immediately prior to the waiver of the preliminary examination on the record. We reject the argument that the circuit court lost subject matter jurisdiction because the information was prematurely filed.

¶5 Gollier next contends that his plea was not knowingly, intelligently and voluntarily entered because the circuit court erroneously informed him about the potential punishment he faced for the charge of first-degree recklessly endangering safety, while armed. Gollier cites WIS. STAT. § 971.08 and ***State v. Bangert***, 131 Wis. 2d 246, 267–272, 389 N.W.2d 12, 23–25 (1986), which require the circuit court to ascertain before accepting a plea that the defendant understands the charges against him, the potential penalties he faces and the constitutional rights he is waiving by entering a guilty plea.

¶6 Gollier was twice told of the correct potential penalty—by the plea questionnaire, which he went over with his attorney, and by the circuit court in person during the plea colloquy. The circuit court correctly explained that the potential penalty was twelve and one-half years of imprisonment, with seven and one-half years of initial confinement and five years of extended supervision, and

that the penalty enhancer would increase the maximum potential period of initial confinement by five years. However, the circuit court then overstated the potential total penalty with the enhancer by five years, erroneously saying that Gollier would be subject to a total of "seventeen-and-a-half years of initial confinement on that offense and five years of extended supervision."

¶7 "Where a defendant is told that he faces a maximum possible sentence that is higher, but not substantially higher, than that authorized by law, the circuit court has not violated the plea colloquy requirements outlined in WIS. STAT. § 971.08 and our ***Bangert*** line of cases." ***State v. Cross***, 2010 WI 70, ¶4, 2009AP3-CR. ***Cross*** is directly on point. Although Gollier was correctly twice told of the potential sentence, he was once mistakenly informed that he faced a lengthier sentence, although not substantially lengthier. Based on ***Cross***, the circuit court's misstatement about the total penalty did not violate § 971.08 and ***Bangert***. Therefore, we reject Gollier's argument.

¶8 Gollier next argues that he received ineffective assistance of trial counsel because his lawyer: (1) should have gotten his confession suppressed as the result of an improper arrest; (2) should have argued that there was a ***Riverside*** violation; and (3) should have argued that the information was prematurely filed. As we explained above, however, these arguments would not have been successful. Gollier also contends that his counsel should have argued that his confessions were the product of a ***Miranda***[1] violation. Trial counsel made this argument during the suppression hearing, but the circuit court rejected it. After hearing the testimony of the officers who interrogated Gollier, the circuit court

[1] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

found that Gollier had been read his ***Miranda*** rights before his interrogations and that he knowingly and voluntarily waived those rights. Therefore, we reject the argument that Gollier received ineffective assistance of counsel.

¶9 Finally, Gollier argues that the sentencing court misused its discretion in ordering that he pay restitution from his prison wages. The circuit court had authority to order Gollier to pay restitution from his prison wages under WIS. STAT. § 973.20(10), which provides that the "court may require that restitution be paid immediately, within a specified period or in specified installments." We reject this argument.

By the Court.—Judgment and order affirmed.

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