COURT OF APPEALS
DECISION
DATED AND FILED

September 5, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2341-CR **Cir. Ct. No. 2009CF816**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHONG YEE VANG,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Chong Yee Vang appeals a judgment convicting him of failing to comply with the sex offender registration statute, WIS. STAT. § 301.45 (2009-10).[1] He also appeals an order denying his motion to withdraw his

[1] All references to the Wisconsin Statutes are to the 2009-10 version.

guilty plea. He contends he was confused about the nature of the charge and the court did not engage in further inquiry before accepting his plea. We conclude Vang's argument lacks a factual basis.

¶2 The complaint charged that on or about March 17, 2009, Vang failed to comply with the sex offender registry requirements. Agent Justin Hansen, a registry specialist for the Department of Corrections, mailed Vang an annual registration letter at his last known address on February 27, 2009. The form was not returned by March 17. After several additional unsuccessful attempts to contact Vang, Hansen referred the matter to the district attorney's office along with a request for prosecution. Later that same day, Vang's brother called Hansen and advised him that Vang was in custody in Burlington, Kentucky. Hansen sent the registration form to Vang at the Kentucky address and Vang promptly filled out and returned the form. The district attorney took no action on Hansen's referral until October 17, 2009, when Vang was arrested on new misdemeanor charges. At that time, the district attorney decided to pursue the March 17 violation.

¶3 Vang ultimately pled no contest to the misdemeanor charges and pled guilty to the sex offender registry charge, a felony. At the plea hearing, after entering no contest pleas to the misdemeanors, Vang was asked how he pled to the sex offender registry violation. Through an interpreter, he responded, "On that one I want to say to you, Judge, that if you can look at that, because that time I was still in jail, I was not out yet, and on March -- on March 17th I was in jail." Vang's attorney explained that Vang was in custody and had not received the forms Hansen sent him. His counsel conceded that Vang knew it was his responsibility to register as a sex offender, but described Vang's "frustration" at being charged considering his prompt compliance upon receiving the forms.

¶4 The court then again asked Vang how he wished to plead and Vang again responded, "I think I will let you look and decide because at that time I was still in jail." The court responded that it could not decide for Vang how to plead. The court indicated that if Vang wished to plead not guilty, the plea agreement "falls apart," the case would then go to trial and a jury would decide whether he was guilty. Vang responded, "I'll just plead guilty to that one then."

¶5 The inquiry did not end there. Before accepting Vang's guilty plea, the court informed Vang of the elements of the offense, which included "that you knowingly failed to provide the required information. In other words, you knew you had to do it and you didn't do it." Vang responded that he understood. The court twice asked Vang if he had any questions and whether he had sufficient time to consult with his attorney. Vang indicated that he had no questions and had sufficient time to speak with his attorney. Vang assured the court that he knew "exactly what was in the criminal complaint," and that he had gone over the plea questionnaire with his attorney and understood it. When asked, in light of all of the court's questions, whether he still wished to plead guilty to the offense, Vang answered, "Yes."

¶6 A defendant wishing to withdraw a guilty plea after sentencing must show by clear and convincing evidence that withdrawal of the plea is necessary to correct a manifest injustice. *See* ***State v. Dawson***, 2004 WI App 173, ¶6, 276 Wis. 2d 418, 688 N.W.2d 12. Vang contends his statements show "confusion" and the court did not conduct an adequate colloquy to establish that Vang knowingly entered the guilty plea. The State responds that Vang's comments do not demonstrate confusion about the proceedings, the elements of the offense or his guilt. Rather, his comments reflect frustration that he was charged because, in the past, he had received the forms from the State and he promptly complied upon

receiving them in this instance. The State notes that Vang did not testify at the postconviction hearing, and never said he was confused about his obligation to comply with the sex offender registry statute. He never testified that he thought being incarcerated and failing to receive the forms constituted a defense.

¶7 Regardless of whether Vang's initial statements demonstrated "confusion," the court's subsequent explanations establish that Vang knowingly entered the guilty plea. After Vang's initial hesitation, he was informed of the elements, the lack of a defense based on the State's inability to locate him and his right to have the jury decide whether he was guilty. Vang personally assured the court that he understood these matters and reiterated his desire to enter the guilty plea. On that basis, our de novo review of the record confirms that Vang's guilty plea was knowingly, voluntarily and intelligently entered. *See* ***State v. Van Camp***, 213 Wis. 2d 131, 140, 569 N.W.2d 577 (1997).

By the Court.—Judgment and order affirmed.

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