COURT OF APPEALS
DECISION
DATED AND RELEASED

October 10, 1996

NOTICE

No. 95-0224-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DORAN J. LONDON,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Iowa County: JAMES P. FIEDLER, Judge. *Affirmed*.

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Doran J. London appeals from a judgment of conviction and from an order denying his postconviction motions. London was convicted after pleading guilty to first-degree reckless homicide, contrary to § 940.02(2)(a)3, STATS., resulting from illegal drugs he supplied, which killed the victim. After pleading guilty and being sentenced, London brought

postconviction motions alleging various infirmities in his plea. His motions were denied, and he appeals. For the reasons set forth below, we affirm.

BACKGROUND

London supplied illegal drugs to another person who administered them to the victim. The victim died. London was charged with first-degree reckless homicide for this incident. He pled guilty to the crime. Under the terms of the plea, London was sentenced to twelve years, concurrent with another sentence imposed in Dane County for an unrelated crime.

ANALYSIS

Jurisdiction

London argues that the circuit court lost jurisdiction over him because at neither his initial appearance nor his arraignment did the court make him aware of the charges. However, London makes no argument to support this assertion.

We reject his argument on two grounds. First, we do not extensively search the record to find facts to support an alleged error. ***Zintek v. Perchik***, 163 Wis.2d 439, 482-83, 471 N.W.2d 522, 539 (Ct. App. 1991). Second, even the most cursory examination of the record reveals that at the June 30, 1993 hearing where London waived his preliminary examination, the circuit court personally informed London of the charges by reading the information into the record in London's presence.

Plea Withdrawal

London next argues that he should be allowed to withdraw his plea because his plea was not knowing, intelligent and voluntary. The burden is on the defendant to show that he should be permitted to withdraw his plea. ***State v. Rock***, 92 Wis.2d 554, 559, 285 N.W.2d 739, 742 (1979). A defendant who seeks to withdraw a guilty or no contest plea carries the heavy burden of

establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct "manifest injustice." ***State v. Krieger***, 163 Wis.2d 241, 249, 471 N.W.2d 599, 602 (Ct. App. 1991). For three reasons, we conclude that London does not meet his burden.

First, as with his first argument, London simply asserts his position, with little record support. Second, London signed a very extensive plea questionnaire which detailed all the rights he was giving up. A completed plea questionnaire is competent evidence of a knowing and voluntary plea. *See* ***State v. Moederndorfer***, 141 Wis.2d 823, 827-28, 416 N.W.2d 627, 629-30 (Ct. App. 1987). Third, the record reveals that the court conducted an oral colloquy with London, and ascertained not only that he understood the rights he was giving up by pleading guilty, but also that any questions he may have had were answered.

In support of his argument that his plea was not knowing, intelligent and voluntary, London cites a portion of a transcript where he indicated that he "forgot how the process [of taking a plea] works." However, this snippet does not support his argument because he made this statement at a July 19, 1993 bond hearing, not at the March 15, 1994 sentencing hearing where he pled guilty. Further, the July 19, 1993 statement was made with reference to a plea entered in Dane County Circuit Court on an unrelated case.

London also asserts that at the time of his plea, he was not competent because he was in withdrawal from his narcotic addiction. We take judicial notice that at the time London made his plea, he had been in custody for approximately nine months. Thus, any addiction to street narcotics would have been in remission for that time. In addition, London had ample opportunity over several months, in the course of several personal colloquies with the court, to apprise the court of any lingering effects of narcotic withdrawal. We reject his unsupported assertion that he was in narcotic withdrawal at the time he entered his plea.

Ineffective Assistance of Counsel

London asserts that he received ineffective assistance of counsel. To prevail on this argument, London has to show that (1) his counsel's performance was deficient, and (2) that deficient performance prejudiced his defense. ***Stickland v. Washington***, 466 U.S. 668, 687 (1984). At issue is whether "counsel's representation fell below an objective standard of reasonableness." ***Id.*** at 688. *See also* ***State v. Ambuehl***, 145 Wis.2d 343, 351, 425 N.W.2d 649, 652 (Ct. App. 1988). London fails to meet his burden.

Specifically, London argues counsel was ineffective because counsel failed to advise him of the consequences of his plea. Even were this true, any possible error could not "prejudice his defense," because the circuit court advised him of the plea consequences, as did the plea questionnaire.

London next argues that counsel failed to challenge the constitutionality of § 940.02, STATS. London, however, does not convincingly indicate why failure to challenge a statute's constitutionality "falls below an objective standard of reasonableness." This is especially so because it is movant's burden to overcome the strong presumption favoring the constitutionality of statutes. ***State v. Hurd***, 135 Wis.2d 266, 271, 400 N.W.2d 42, 44 (Ct. App. 1986). London's cursory legal analysis does not meet that burden here.

London argues that his attorney failed to request lesser included offense instructions, but London forgets that this was not a trial to a jury with jury instructions. London pled guilty. This argument is frivolous.

London argues that his attorney failed to correct his criminal record. However, the transcript demonstrates that the district attorney introduced evidence of London's record, and London himself made no attempt to challenge the record when he addressed the court. In addition, at a postconviction hearing, the court made clear it had not relied upon London's former record.

London asserts that his attorney failed to investigate such matters as the victim's alleged history of suicide attempts, and her ingestion of drugs other that those London supplied. However, London does not support these assertions of the victim's behavior in any manner.

Newly Discovered Evidence

London last argues that newly discovered evidence requires reversal. However, this is merely another cut at his argument that the victim ingested drugs other than those he supplied. He provides absolutely no support for this assertion. A naked assertion is not grounds for further consideration. ***In re Balkus***, 128 Wis.2d 246, 255 n.5, 381 N.W.2d 593, 598 (Ct. App. 1985).

By the Court.—Judgment and order affirmed.

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