COURT OF APPEALS
DECISION
DATED AND FILED

September 23, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0364-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CLINTON N. MANSKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: TIM A. DUKET, Judge. *Affirmed.*

Before Cane, P.J., Myse and Hoover, JJ.

PER CURIAM. Clinton Mansker appeals a judgment convicting him of eight counts of sexually assaulting two children, seven and twelve years old, and one count of exposing his genitals to a ten-year-old child. He also appeals an order denying his postconviction motion to withdraw his guilty pleas and enter an insanity plea and to reduce the 320-year sentence. Mansker argues

that the trial court erred when it denied his motion to change his plea without a hearing, arguing that his motion establishes a factual basis for a finding of manifest injustice because he did not have counsel at the plea hearing and because the pleas lack a factual basis in the record. He also argues that his 320-year sentence is excessive and that the trial court's failure to mention the sexual predator law at sentencing establishes that consideration of ch. 980, STATS., is a "new factor" justifying further review of the sentence. We reject these arguments and affirm the judgment and order.

At Mansker's initial appearance, he validly waived his right to counsel and pleaded guilty to all of the crimes alleged in the complaint. Using the criminal complaint and Mansker's confession to the police as a factual basis for the pleas, the trial court adjudged Mansker guilty. Mansker then retained counsel and filed a motion to withdraw his pleas. However, in exchange for the prosecutor's recommendation that Mansker be sentenced to eighty years in prison, he withdrew the motion. After the court sentenced Mansker to consecutive terms totaling 320 years, Mansker filed a postconviction motion to withdraw his pleas and modify the sentence. The motion was denied and Mansker appeals.

The trial court properly denied the postconviction motion without a hearing because the facts alleged in the postconviction motion do not warrant the relief sought. *See* ***State v. Bentley,*** 201 Wis.2d 303, 309, 548 N.W.2d 50, 53 (1996). To establish grounds for withdrawing his plea after sentencing, Mansker was required to show a manifest injustice by clear and convincing evidence. *See* ***State v. Truman,*** 187 Wis.2d 622, 624, 523 N.W.2d 177, 178-79 (Ct. App. 1994). A failure to assert an insanity defense does not, by itself, establish a manifest injustice. *See* ***State v. Krieger,*** 163 Wis.2d 241, 253-55, 471 N.W.2d 599, 603 (Ct. App. 1991). The burden was on Mansker to demonstrate why a change of

plea was appropriate. To meet this burden, he had to show a basis for the plea by proof encompassing the elements of the insanity defense. *See* ***State v. Kezee,*** 192 Wis.2d 213, 222, 531 N.W.2d 332, 335 (Ct. App. 1995). Mansker's motion was supported only by his statement that he suffered "black-outs" and his father's letter stating that members of his family suspected Mansker of having multiple personalities. This weak proof of mental disease or defect and Mansker's failure to link his alleged mental illness to his ability to appreciate the wrongfulness of his actions or conform his conduct to the requirements of the law justify denial of the motion without a hearing. Mansker's pleas constituted a waiver of all defenses including not guilty by reason of mental disease or defect. *See* ***id.*** at 219, 531 N.W.2d at 334. In the absence of any basis for challenging the guilty pleas, the unsupported postconviction assertion of an insanity defense does not establish a manifest injustice or create a sufficient issue to merit a postconviction hearing.

Mansker challenges the validity of his pleas alleging that they were made without the benefit of counsel and without an adequate factual basis. Mansker waived his right to counsel and concedes that the trial court followed the prescribed procedure for waiving counsel and cannot be faulted in this regard. He argues that "the record is clear that [he] did not subjectively understand the magnitude of waiving his right to counsel." No specific part of the record is cited in support of that proposition, and our review of the record discloses no subjective misunderstanding.

The record establishes an adequate factual basis for the plea. Without objection, the trial court considered the criminal complaint and Mansker's confession as the factual basis. A factual basis for a guilty plea is established if the trial court is presented with facts that, if proved, would constitute the offense charged. *See* ***Little v. State,*** 85 Wis.2d 558, 560-61, 271 N.W.2d 105, 107-08

(1978). It is not necessary that a defendant stipulate that the facts alleged in the complaint are true before the complaint can be used as the factual basis for a plea. Any issue regarding the admissibility of the confession is also irrelevant when the confession is used for that limited purpose. Absent any objection to the admissibility of the confession, the trial court is under no obligation to conduct a separate hearing or make specific findings as to whether the statement is voluntary. *See* ***Pickens v. State,*** 96 Wis.2d 549, 575-76, 292 N.W.2d 601, 614 (1980).

The trial court properly exercised its discretion when it sentenced Mansker to consecutive terms totaling 320 years. There is a strong public policy against interfering with the trial court's sentencing discretion. *See* ***State v. Curvello-Rodriguez,*** 119 Wis.2d 414, 433-34, 351 N.W.2d 758, 767-68 (Ct. App. 1984). The question is not whether this court would have imposed a different sentence, but whether the trial court improperly exercised its discretion. *See* ***State v. Hamm,*** 146 Wis.2d 130, 154, 430 N.W.2d 584, 595 (Ct. App. 1988). The trial court must consider the gravity of the offense, the character and rehabilitative needs of the defendant and the need to protect the public. ***Id.*** The record shows that the trial court considered these factors. The weight to be given each of these factors is within the trial court's wide discretion. ***Id.*** The sentence is not so excessive or outside the bounds of reason as to shock public sentiment in light of Mansker's previous criminal record and his failure to respond to previous treatment programs, probation and parole. *See* ***Ocanas v. State,*** 70 Wis.2d 175, 185, 233 N.W.2d 457, 461 (1975).

Mansker's motion did not establish any "new factor" relating to ch. 980, STATS. A new factor is a fact highly relevant to the imposition of sentence, but unknown to the sentencing court at the time of sentencing either

because it was not then in existence or because even though it was in existence, it was unknowingly overlooked by all of the parties. *See* ***State v. Michels***, 158 Wis.2d 94, 96, 441 N.W.2d 278, 279 (Ct. App. 1989). It must be an event or development that frustrates the purpose of the original sentence selected. ***Id***. Chapter 980 was enacted two years before Mansker was sentenced. The record discloses no reason to believe that the trial court was unaware of the sexual predator law at the time it imposed the sentence or that it unknowingly overlooked the consequences of the sexual predator law. Nothing in ch. 980 frustrates the purpose of the original sentence.

Finally, Mansker requests a discretionary reversal in the interest of justice. *See* § 752.35, STATS. Mansker has not established that the real controversy has not been fully and fairly tried, that justice has miscarried or that retrial would render a different result.

By the Court.—Judgment and order affirmed.

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