COURT OF APPEALS
DECISION
DATED AND FILED

August 17, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP883-CR **Cir. Ct. No. 2001CF277**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE G. CORPUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

Before Brown, Nettesheim and Snyder, JJ.

¶1 PER CURIAM. Jose Corpus appeals from a judgment of conviction for possession of marijuana with intent to deliver and from an order denying his motion for postconviction relief. He argues that his guilty plea was involuntary as induced by a threat and that he did not understand the plea proceeding because it

was not interpreted for him in Spanish. He also argues that his sentence is based on inaccurate information from a confidential informant. We affirm the judgment and order.

¶2 Executing a search warrant, police found more than 2,000 pounds of marijuana on the property where Corpus lived for thirty years. Corpus, his wife, Angelica Corpus, and Santiago Villalobos, who was residing at the Corpus residence, were charged as parties to the crime of possession with intent to deliver marijuana in excess of 2,500 grams, keeping a drug house, and possession of drug paraphernalia to grow, package and use marijuana. Corpus entered a guilty plea to the possession with intent to deliver charge and the remaining two charges were dismissed and read-in at sentencing.

¶3 Corpus filed a postconviction motion alleging ineffective assistance of trial counsel. After that motion was denied, Corpus obtained new counsel and filed a second motion for postconviction relief.[1] The issues on appeal were raised in the second motion.

¶4 To withdraw a plea after sentencing, the defendant must establish by clear and convincing evidence, that failure to allow a withdrawal would result in a manifest injustice. ***State v. Trochinski***, 2002 WI 56, ¶15, 253 Wis. 2d 38, 644 N.W.2d 891. "A plea which is not knowingly, voluntarily or intelligently entered is a manifest injustice." ***State v. Giebel***, 198 Wis. 2d 207, 212, 541 N.W.2d 815 (Ct. App. 1995). A motion to withdraw a plea is addressed to the circuit court's

[1] By an order of July 1, 2003, this court granted an extension of time to file a postconviction motion and specifically allowed a second postconviction motion under WIS. STAT. RULE 809.30(2) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

discretion and we will reverse only if the circuit court has failed to properly exercise its discretion. ***State v. Booth***, 142 Wis. 2d 232, 237, 418 N.W.2d 20 (Ct. App. 1987). We will not upset the circuit court's findings of evidentiary and historical fact unless they are clearly erroneous. *See* ***State v. Turner***, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987).

¶5 We first address Corpus's claim that he did not understand the plea proceeding because a Spanish interpreter was not provided at the hearing. At the postconviction motion hearing, Corpus testified that he was not provided the jury instructions explaining the elements of the offense in Spanish, that he did not discuss the instructions in Spanish with his attorney, and that it was just easier for him to answer in the affirmative to questions posed during the plea colloquy rather than saying he did not understand portions of what was being said.

¶6 "[F]airness requires that those who speak and understand only languages other than English and who become defendants in Wisconsin's criminal courts should have the assistance of interpreters when needed." ***State v. Douangmala***, 2002 WI 62, ¶44, 253 Wis. 2d 173, 646 N.W.2d 1. WISCONSIN STAT. § 885.38(3)(a) provides, in part, that "if the court determines that the person has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter." At the commencement of the plea hearing, recognizing that an interpreter had been used at other hearings before the court, the circuit court inquired whether Corpus was in need of an interpreter. Corpus himself indicated that he did not need an interpreter. Corpus's attorney explained that he had spent two and one-half hours going over the plea questionnaire with Corpus and that counsel had slight problems conveying the meaning of some of the elaborate terminology used on the form because Corpus did not have any formal education. At no point did Corpus

or his attorney indicate problems communicating due to Corpus's inability to fully read and speak English.

¶7 The circuit court found that Corpus had a sufficient understanding of the English language to understand the plea proceeding. That finding is not clearly erroneous. As the circuit court noted, Corpus was a naturalized United States citizen, he had lived at his present residence for a lengthy period, and he had been employed at U.S. Gypsum for at least fifteen years. During the plea hearing, Corpus explained that the reason he had trouble communicating to the court in English at prior hearings was because he was nervous. He indicated that he now understood things "pretty well," and that he would ask for something to be repeated if he did not understand it. Corpus gave the circuit court a lengthy explanation in English of his reason for taking certain medication and that it did not affect his ability to understand the proceeding. Further, at an earlier hearing to address a motion for defense counsel to withdraw, Corpus asked the interpreter to stop interpreting because he understood what was being said. At the conclusion of that hearing the circuit court asked Corpus if he wanted the interpreter for the next scheduled proceeding and Corpus indicated "no." An interpreter was not provided for Corpus at any of the hearings held thereafter until the hearing on his first postconviction motion. Corpus never indicated a need for an interpreter. Finally, during the postconviction motion hearing, Corpus frequently answered questions in English before the interpreter finished conveying the question. This demonstrated to the circuit court Corpus's ability to understand English. The circuit court properly denied Corpus's motion to withdraw his plea based on his claim that he did not understand the proceeding conducted in English.

¶8 Corpus also argues that his plea was involuntary as induced by a threat. On the plea questionnaire Corpus indicated that he was threatened to enter

his guilty plea. During the plea colloquy, defense counsel pointed out that Corpus had received a threat from another party and that counsel had made sure the threat did not influence the decision to enter a guilty plea. The parties agreed that the threat had not come from the prosecution.

¶9 Corpus claims that the circuit court failed to determine the nature of the threat and whether it influenced the plea. However, during the plea colloquy the circuit court asked Corpus whether his plea was a product of his own free will and not because someone made a threat. Corpus indicated the plea was of his own free will and not because of a threat. The circuit court also asked whether there were any other promises, threats or consideration other than the plea agreement. Corpus indicated "no."

> Whether a guilty plea is voluntarily and intelligently made is a conclusion with respect to the state of mind of the accused. Inquiry with respect to threats and promises is made for the purpose of determining the accused's state of mind with respect to the voluntariness and intelligence of the guilty plea of the accused. Unless the threats coerce or induce the plea to an extent that deprives the accused of understanding and free will, they provide no basis for rejection of the guilty plea or later withdrawal.

Verser v. State, 85 Wis. 2d 319, 329, 270 N.W.2d 241 (Ct. App. 1978).

¶10 The plea colloquy established that Corpus's free will was not overcome by the threat he received. Corpus has not made a prima facie showing that his plea was involuntary. *See* ***State v. Hampton***, 2004 WI 107, ¶46, 274 Wis. 2d 379, 683 N.W.2d 14. Even considering the proof Corpus made at the postconviction motion hearing, he did not establish that his plea was induced by

the threat.[2] Corpus testified that while in jail awaiting trial, he received a letter written in Spanish. The letter was addressed from his brother but Corpus believed his brother did not write it. He believed Villalobos, his codefendant, wrote the letter, sent it out of the jail, and had it sent back into the jail to Corpus. As Corpus described it, the letter indicated that he was talking too much in jail and warned him not to say too much or more charges would be added against him, possibly a federal charge if a conspiracy was revealed. Nowhere in the letter, which Corpus read aloud at the hearing, was reference made to Corpus entering a guilty plea. The circuit court found that the letter was couched only in recommendations and did not include a threat. The finding is not clearly erroneous. The circuit court properly denied Corpus's claim that his plea was induced by a threat.

¶11 The final issue is whether Corpus was sentenced on the basis of inaccurate information. Corpus points to the circuit court's reliance on information from a confidential informant that someone named "Old Joe" on Amos Road had been dealing marijuana for ten to fifteen years.[3] Corpus claims

[2] In his appellant's brief Corpus provides no description of the threat he contends induced his plea. In addition to a letter Corpus received in jail, he described at the hearing two other threats. The first was a 1999 threat that Corpus should allow drug dealers to use his house as a distribution center or he was going to "lose my wife." The second was a threat conveyed by his first retained attorney that "they" wanted Corpus to take all the blame because it would be easier to pay one attorney than to pay for everybody. Corpus did not argue that these threats induced his plea. He could not. The 1999 threat occurred prior to the criminal charges being filed. Corpus discharged the attorney who conveyed the message that Corpus should take the plea and the plea was a consequence of negotiations conducted by new counsel.

[3] At sentencing the prosecutor indicated that confidential informants said someone named "old man Joe" was selling marijuana out on Amos Road and that at least one informant was aware of such production going back for at least fifteen to twenty years. The circuit court noted that Corpus's "[b]ehavior pattern appears to be a large scale drug dealer for sometime. I believe he admits to dealing two and a half years; and others said it was from ten to fifteen years."

the prosecution failed to present any testimony that showed that Corpus was in fact "Old Joe," or that the informants were reliable.

¶12 A defendant has a due process right to be sentenced based on accurate information. ***State v. Groth***, 2002 WI App 299, ¶21, 258 Wis. 2d 889, 655 N.W.2d 163. The defendant has the burden of proving by clear and convincing evidence the inaccuracy of the information and that the information was prejudicial. ***Id.***, ¶22. A constitutional issue is presented which we review de novo as a question of law. ***Id.***, ¶21.

¶13 First, we note that at an earlier hearing on a motion to suppress evidence obtained under the search warrant, the circuit court found that the statements of the confidential informants were reliable and corroborated each other. The circuit court specifically found that a common-sense inference could be made that Corpus was "old man Joe," since Corpus was sixty-five years of age and lived on Amos Road. We also note that Corpus's first name is Jose, readily transposable to Joe.

¶14 Additionally, the circuit court's perception that Corpus was an active drug dealer did not rest solely on the confidential informant's statement that "Old Joe" had been dealing in excess of fifteen years. The circuit court was persuaded by the huge amounts of drugs found at Corpus's residence, the large sums of cash, jewelry and other expensive items he possessed, as well as Corpus's own admission of dealing for more than two years. In sum, Corpus did not establish that the information was inaccurate or that the circuit court relied on it. The circuit court properly denied his motion for postconviction relief.

By the Court.—Judgment and order affirmed.

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