**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**December 27, 2006**

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**Appeal No. 2004AP2526** **Cir. Ct. No. 1996CF960649**

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

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**NATHANIEL L. DUKES,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Milwaukee County: KAREN E. CHRISTENSON, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Nathaniel Dukes appeals from a circuit court order denying his WIS. STAT. § 974.06 (2003-04) postconviction motion,[1] by which he sought to withdraw his guilty pleas to three counts of armed robbery as a party to a crime. Dukes argued that he did not understand what "party-to-a-crime" liability meant when he entered his plea and that the circuit court misled him as to its meaning. He also claimed that trial counsel failed to apprise him of the meaning of the phrase and that it was not explained in the plea questionnaire he signed. The circuit court denied Dukes' motion without holding an evidentiary hearing. On appeal, Dukes contends that, at the very least, the circuit court should have held an evidentiary hearing on his motion. We conclude that the circuit court's explanation at the plea hearing adequately apprised Dukes of what it meant to be a party to a crime and that the record demonstrates that Dukes knowingly, intelligently, and voluntarily entered his guilty pleas. We therefore affirm the postconviction order.

¶2 As a teenager, Dukes was involved in a number of robberies with other participants. In some of the robberies, Dukes carried a sawed-off shotgun, and in others only an accomplice was armed. Dukes was initially charged in juvenile court, but he was ultimately waived into adult court. As part of Dukes' plea bargain, the State dismissed additional armed robbery counts against him, but Dukes agreed that the additional charges could be considered by the circuit court at sentencing. Dukes was ultimately sentenced to a total of sixty years in prison on two of the counts. On the third count, he received a consecutive forty-year

[1] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

prison term, but the circuit court stayed the prison sentence and placed Dukes on probation for forty years.

¶3 In the postconviction motion that is the subject of this appeal,[2] Dukes moved to withdraw his pleas, claiming that he had not understood the meaning of the phrase "party to a crime." He claimed that at the time of the plea hearing, he believed that the phrase "simply meant that more than one person had been charged" with the offenses. He claimed that his trial counsel had not explained the meaning of the phrase, and that the circuit court had not only inadequately explained the phrase, but had actively misled him as to its meaning. The circuit court disagreed, reasoning that the record demonstrated that Dukes acknowledged that the facts in the complaint were true, and that the complaint, which "detail[ed] the three charges …, alleges and reflects that [Dukes] actively participated in the robberies, planned some of the robberies, knew at all times that a robbery was going down, and participated in dividing up the proceeds from the robberies." The court concluded that it had not "erroneously define[d] the nature of the phrase 'party to a crime'" because Dukes was specifically informed that the phrase meant he had assisted others in the commission of the offenses.

¶4 On appeal, Dukes argues that because the record does not conclusively demonstrate that he is not entitled to relief, the circuit court erred in denying his motion without a hearing. We disagree.

¶5 WISCONSIN STAT. § 971.08(1) requires that, before a circuit court may accept a guilty plea, it must engage in a colloquy with the defendant to ensure

[2] The Hon. Lee Wells conducted the plea hearing. The postconviction motion that is the subject of this appeal was decided by the Hon. Karen E. Christenson.

that the plea is being made "voluntarily with understanding of the nature of the charge," among other things. *See also* ***State v. Bangert***, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). For a plea to be valid, the defendant must have a "knowledge of the elements of the offense, not a knowledge of the nuances and descriptions of the elements." ***State v. Trochinski***, 2002 WI 56, ¶29, 253 Wis. 2d 38, 644 N.W.2d 891. The test for determining whether an evidentiary hearing is required on a postconviction motion is well-settled:

> [I]f a motion to withdraw a guilty plea after judgment and sentence alleges facts which, if true, would entitle the defendant to relief, the trial court must hold an evidentiary hearing. However, if the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusionary allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

***Nelson v. State***, 54 Wis. 2d 489, 497-98, 195 N.W.2d 629 (1972). "[I]f the motion fails to allege sufficient facts, the circuit court has the discretion to deny a postconviction motion without a hearing based on any one of the three factors enumerated in ***Nelson***." ***State v. Bentley***, 201 Wis. 2d 303, 310-11, 548 N.W.2d 50 (1996).

¶6 In its decision, the circuit court quoted at length from the plea colloquy with Dukes, noting in particular that Dukes affirmed that he understood that party to a crime liability meant, in the circuit court's words, "that you did along with other people, sometimes one, sometimes two, three or four people [commit] these crimes, as party to a crime; that is, you assisted in their handling of those?" The circuit court continued: "In other words, you may have been next to the people that were being robbed or you may have been in a vehicle that was there to have the people rob, etc." Dukes argues that it was this second sentence

that misled him and that, as a result, he believed that "party to a crime" liability could potentially attach to anyone who was simply near the scene of a crime.

¶7 As the postconviction court noted, however, the colloquy continued on for some time, with the circuit court specifically questioning Dukes about the circumstances of and his participation in each crime to which he was pleading. Among other things, Dukes acknowledged that one of the items he and the others had used in the crimes was a sawed-off shotgun, and he further acknowledged that he had: actively participated in each crime; helped in the planning of some of the robberies; known in advance the circumstances and timing of each robbery; and participated in dividing up the proceeds of the robberies. Dukes acknowledged that the facts set forth in the complaint were true and further admitted that he was pleading guilty because he had committed the crimes along with others.

¶8 We are satisfied that the postconviction court properly exercised discretion in denying Dukes' motion without a hearing. The plea-hearing transcript demonstrates that the circuit court properly defined "party-to-a-crime" liability, and that Dukes stated that he understood. Dukes also agreed that the circuit court's description of his participation in the crimes was accurate, and he admitted committing the crimes with others. Although some of the circuit court's comments regarding what it means to be a party to a crime were less than clear, we agree with the circuit court that the entire record of the plea hearing conclusively demonstrates that Dukes was properly apprised of the nature of the charges against him and that he knowingly, intelligently, and voluntarily entered his guilty pleas.

*By the Court.*—Order affirmed.

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