

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 10, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP675-CR

Cir. Ct. No. 2003CF1455

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PASTOR RAMIREZ,

DEFENDANT-APPELLANT.

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

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Pastor Ramirez appeals from a judgment of conviction and an order denying his postconviction motion. The issues relate to plea withdrawal. We affirm.

¶2 Ramirez pled guilty to one count of homicide by intoxicated use of a vehicle. His postconviction motion sought to withdraw that plea. The circuit court denied the motion.

¶3 Ramirez first argues that the court's plea colloquy failed to meet the requirements of *State v. Bangert*, 131 Wis. 2d 246, 389 N.W.2d 12 (1986). Ramirez appears to argue that the court failed to meet those requirements because the court's questions were too general and relied too heavily on asking Ramirez' attorney whether they had discussed the elements of the offense and the nature of the rights he was waiving. The State concedes that the colloquy was inadequate in certain respects. However, an inadequate colloquy is not, by itself, grounds for relief. The defendant must also allege that he did not know or understand the information that should have been provided. *See id.* at 274.

¶4 In this case, Ramirez' postconviction motion was limited in its assertions regarding his lack of knowledge or understanding. The factual assertions of the motion are contained in an affidavit by counsel. Counsel averred that Ramirez had "some confusion" as to the maximum penalty, but the factual statements that follow that assertion show only the possibility that Ramirez was confused about the likely penalty that would be imposed by the court, not about the legal maximum penalty. This is not sufficient to be considered an allegation that Ramirez did not know or understand the maximum penalty.

¶5 In addition, Ramirez' motion argued that the colloquy was insufficient because the court first asked Ramirez what his plea was, and then only after that point made the inquiries to establish Ramirez' understandings. Ramirez cites no authority holding that the validity of the colloquy depends on what order

these events occur in, and we are not aware of any. He has not established that this is grounds for relief.

¶6 Furthermore, even if the colloquy was inadequate in many respects, the State met its burden to show by clear and convincing evidence that Ramirez understood the proper information. His trial counsel testified about the discussions with Ramirez, and that Ramirez appeared to understand his rights, the nature of the charge, the potential penalty, and other matters. Since Ramirez did not testify, counsel's testimony remained undisputed. The circuit court appeared to accept that testimony in making its decision. Ramirez argues on appeal that the State failed to present proof of his understanding, but Ramirez apparently does not recognize that counsel's testimony, if believed, is sufficient proof.

¶7 Finally, Ramirez argues that he is entitled to withdraw his plea because the court failed to give the deportation warning required by WIS. STAT. § 971.08 (2003-04).¹ A defendant is entitled to withdraw his plea on that ground only upon a showing that the plea is likely to result in his being deported, excluded from admission to this country, or denied naturalization. Section 971.08(2). Ramirez asserts that he is likely to be deported, in light of the nature of his crime. However, the Seventh Circuit has held that a conviction under the Wisconsin statute Ramirez pled guilty to is not a basis for deportation. *Bazan-Reyes v. INS*, 256 F.3d 600, 605-12 (7th Cir. 2001). There is no basis to conclude that Ramirez is likely to be deported.

By the Court.—Judgment and order affirmed.

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

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

