COURT OF APPEALS
DECISION
DATED AND FILED

October 22, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal Nos. 2012AP927
2012AP981
STATE OF WISCONSIN

Cir. Ct. Nos. 2004CF5893
2004CF4535

IN COURT OF APPEALS
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NICKOLAS JAMES LAUMANN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County: DAVID A. HANSHER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Nickolas James Laumann appeals an order denying his motion for postconviction relief. He argues that he should be allowed to withdraw his plea because: (1) the elements of the offenses were not fully explained to him at the plea hearing; (2) he did not know the "degree" of sexual

assault to which he was pleading guilty; (3) the circuit court did not advise him of his privilege against self-incrimination before asking him if it could use the complaint as a factual basis for the plea; and (4) there is newly discovered evidence that the victim recanted. We affirm.

¶2 Laumann pled guilty to one count of repeated sexual assault of the same child, one count of conspiracy to intimidate a victim (the child), one count of threatening to injure another person, and one count of felony bail-jumping. We affirmed the judgments of conviction on direct appeal. Laumann then filed a collateral motion for postconviction relief under WIS. STAT. § 974.06. After a hearing on the motion that spanned two days, the circuit court rejected Laumann's claims.

¶3 Laumann first argues that he should be allowed to withdraw his plea because the elements of the offenses were not fully explained to him at the plea hearing. In order for a defendant to knowingly, intelligently, and voluntarily waive the right to trial by pleading guilty, the defendant must understand the full nature of the charges against him. *See* ***Brady v. United States***, 397 U.S. 742, 748 n.6 (1970). The defendant's "understanding of the nature of the charges must include an awareness of the essential elements of the crime." ***State v. Bangert***, 131 Wis. 2d 246, 267, 389 N.W.2d 12, 23 (1986).

¶4 During the plea hearing, the circuit court read the charges from the amended information to Laumann, reciting the elements of each crime. The circuit court asked Laumann whether he understood the elements of the crimes before it accepted his plea, and Laumann said that he did. Laumann's lawyer told the circuit court that he had explained the elements of the crimes to Laumann. Laumann acknowledged signing a plea questionnaire and waiver-of-rights form,

which provided that the crimes to which Laumann was pleading guilty had elements and that these elements had been explained by his lawyer. At the postconviction motion hearing, Laumann's trial lawyer testified he could not recall the specifics of his conversations with Laumann prior to the plea hearing, but that it was his standard practice to explain the charges to his client and go through the elements of the crimes, and he had copies of the jury instructions listing the elements of the crimes in Laumann's file. Laumann also testified at the postconviction motion hearing, but said that he did not understand the elements of the crimes. The circuit court found Laumann's lawyer's testimony to be credible and found Laumann's assertion that he did not understand the elements to not be credible. Based on the colloquy during the plea hearing and the circuit court's credibility assessments at the postconviction motion hearing, Laumann's plea was knowingly, intelligently, and voluntarily entered.

¶5 Laumann next argues that he should be allowed to withdraw his plea because he did not understand the "degree" of sexual assault that correlated with his charge. Laumann pled guilty to repeated sexual assault of the same child in violation of WIS. STAT. § 948.025. That statute does not enumerate different degrees of severity like some of the other sexual assault statutes. Even when sexual assault statutes enumerate different degrees of severity by referring to the charge as first-degree sexual assault or second-degree sexual assault, those designations are not elements of the crime; they are the titles of the statutory subsections and not part of the statute itself. *See* WIS. STAT. § 990.001(6) ("The titles to subchapters, sections, subsections, paragraphs and subdivisions of the statutes and history notes are not part of the statutes."). Here, Laumann was informed of both the elements of the charge and the range of penalties he faced.

Laumann is not entitled to withdraw his plea on the grounds that he did not understand the "degree" of sexual assault to which he was entering a plea.

¶6 Laumann next contends that he should be allowed to withdraw his plea because the circuit court did not inform him of his privilege against self-incrimination before using his statement to police, as recounted in the complaint, as a factual basis for his plea. This argument misses the mark. By the time of the plea hearing, Laumann had *already* given up his privilege against self-incrimination when he gave a statement to the police. Moreover, the circuit court informed Laumann that he was giving up the right to challenge that statement by choosing to enter a plea to the charges. We reject Laumann's argument.

¶7 Laumann next argues that he should be allowed to withdraw his plea because he was not aware that the victim had recanted her accusations against him in a victim impact statement dated six months before he entered his plea. He characterizes the victim impact statement as "newly discovered" evidence. The fact that the victim recanted her allegations against Laumann is not newly discovered evidence. To the contrary, Laumann was well aware that the victim had changed her story because he was convicted of intimidating a witness, a felony, as a result of his actions in conspiring with others to *cause* the child victim to recant. In fact, Laumann admitted in an affidavit seeking to restore his privileges in jail while his case was pending that a third person contacted the victim on his behalf to persuade her to change her statement to police. The fact that the victim impact statement contained this recantation is of no consequence because it adds nothing to the equation. The victim recanted because Laumann intimidated her into doing so. Laumann is not entitled to withdraw his plea based on the victim impact statement.

¶8 Finally, Laumann argues that his appellate lawyer was constitutionally ineffective when representing him. To establish ineffective assistance, a defendant must show both that his lawyer's performance was deficient and that his lawyer's deficient performance prejudiced his defense. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). Laumann contends that his lawyer ineffectively represented him by failing to raise the issues we have addressed in this opinion. As explained above, none of these issues would have been successful. Therefore, Laumann cannot show that he was prejudiced by his lawyer's failure to raise the issues on direct appeal.

By the Court.—Order affirmed.

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