

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 19, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2008AP901-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2006CF3716

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHINO ANTONIO MOORE, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

Before Higginbotham, P.J., Lundsten and Bridge, JJ.

¶1 PER CURIAM. Chino Antonio Moore, Jr., appeals from the judgment of conviction entered against him and the order denying his motion for postconviction relief. He argues that he did not enter his guilty plea knowingly, intelligently, and voluntarily, and should be allowed to withdraw it, and that the

trial court erred when it denied his repeated requests for substitution of counsel because his counsel had a conflict of interest. Because we conclude that the record demonstrates that Moore entered his plea knowingly, intelligently, and voluntarily, and that he waived the right to challenge the court's decision to deny his counsel's motions to withdraw, we affirm.

¶2 Moore pled guilty to one count of felony murder while attempting to commit an armed robbery as a party to a crime. Before entering his plea, Moore asked the circuit court three times to allow his counsel to withdraw. The first two times were oral requests, which the court denied, and the third request was a written request made the day Moore entered his plea. The court did not decide the third motion before accepting Moore's guilty plea. The court sentenced Moore to seventeen years of initial confinement and eight years of extended supervision.

¶3 Moore then moved to withdraw his plea. Moore alleged that the court failed to establish on the record that he fully understood the elements of the crime with which he was charged, including his culpability as a party to a crime. He further alleged that the circuit court erred when it refused to allow trial counsel to withdraw based on a conflict of interest. The circuit court held a hearing on the motion and denied it.

¶4 Moore argues that the circuit court's colloquy with him did not establish that he understood the elements of the crime to which he pled. In order to withdraw a guilty plea after sentencing, a defendant must prove "by clear and convincing evidence, that a refusal to allow withdrawal of the plea would result in 'manifest injustice.'" *State v. Brown*, 2006 WI 100, ¶18, 293 Wis. 2d 594, 716 N.W.2d 906. The defendant may do this by showing that the plea was not knowingly, intelligently, and voluntarily entered. *Id.* "[A] plea will not be

voluntary unless the defendant has a full understanding of the charges against him [or her].” *Id.*, ¶29. *See also* WIS. STAT. § 971.08(1)(a) (2007-08).¹

¶5 A circuit court may establish the defendant’s understanding of the charges to which he or she is pleading by: (1) summarizing the elements of the crime by reading from the appropriate jury instructions; (2) asking defense counsel whether he or she explained the charges to the defendant, and asking counsel to summarize the explanation including a reiteration of the elements; or (3) referring to the record or other evidence of the defendant’s knowledge of the charges established before the plea hearing. *Brown*, 293 Wis. 2d 594, ¶¶46-48. Whether the plea was knowing, intelligent, and voluntary is a question of constitutional fact. *Id.*, ¶19. We accept the circuit court’s findings of historical and evidentiary fact unless they are clearly erroneous, but we independently review whether those facts establish that the defendant entered the plea knowingly, intelligently, and voluntarily. *Id.*

¶6 The record of the plea hearing in this case shows that defense counsel and the court explained the elements of the offense to Moore, and that Moore understood them. At the hearing, defense counsel stated that he had given Moore a copy of the jury instructions on felony murder and party to a crime, that they reviewed them together, and that Moore said he understood. The court then asked counsel if he had a copy of the instructions, and counsel responded that he had previously given his copies to Moore, but that he had entered the elements of

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

the crime on the Guilty Plea Questionnaire. The prosecutor then went to get copies of the instructions.

¶7 The court then asked Moore if his lawyer had gone over the elements of the offense “and how they relate to the facts in the case,” to which Moore answered: “Yes.” The court explained that Moore was charged with attempted armed robbery, and that “the death of the victim was caused by the attempt to commit that armed robbery.” Moore said that he understood. The court then asked if he understood the felony murder instruction, and Moore answered: “Yeah.” The court then explained the elements of armed robbery, and stated that, in this case, it was an attempted armed robbery. The prosecutor said that “attempt” was defined in the instruction he had just given defense counsel. The court asked Moore if he understood that, to which he again replied: “Yeah.” The court then stated that an additional element was the use, or threat of use, of a dangerous weapon and explained what that meant. Defense counsel then stated:

Judge, before the Court continues, I want to make a specific note of two things. First of all—and I apologize. I had previously given Mr. Moore copies of the instructions that [the prosecutor] was kind enough to get today and furnished them to him, but on a prior occasion on another date while he was in custody in jail I gave him copies of those instructions excluding Instruction 1480, the armed robbery instruction, but all other ones including those I had furnished him.

Further, while we were getting these, I asked that—he indicated to me that was true. Is that correct, Mr. Moore? That I gave you those written instructions before?

THE DEFENDANT: Yes.

[DEFENSE COUNSEL]: Now the other thing, Judge. While we had the break and were getting these instructions, if Mr. Moore either does not understand something or disagrees with something—I want it very clear if there is something he doesn’t understand or disagrees with, now is the time to tell you.

THE COURT: Correct. Do you understand that, sir?

THE DEFENDANT: Yes.

And later on during the colloquy, the prosecutor asked defense counsel if he had explained to Moore what an attempt was and what it meant to be a party to a crime, to which defense counsel responded that he had.²

¶8 Moore argues specifically that the plea colloquy did not establish that Moore understood “attempt liability in any way.” Moore appears to be arguing that the court was required to ensure that he understood the legal definition of attempt, as opposed to determining that he understood that the underlying crime charged was attempted armed robbery. However, “a valid plea requires only 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.

¶9 Based on this record, we conclude that the sentencing court fully complied with its obligations to determine that Moore understood the elements of the offense. In fact, the sentencing court in this case complied with all three methods for making such a determination. See *Brown*, 293 Wis. 2d 594, ¶¶46-48. Consequently, we conclude that the record establishes that Moore’s plea was knowingly, intelligently, and voluntarily entered.

¶10 Moore also argues that he should be allowed to withdraw his plea because the circuit court erroneously exercised its discretion when it denied his

² Moore argues that at the postconviction hearing defense counsel testified that he did not explain “attempt” to Moore, and that Moore never stated the elements of felony murder or attempt in his own words. Counsel’s statements during the plea colloquy, however, establish that counsel did discuss all of the elements of the crime with Moore prior to the plea hearing.

counsel's motions to withdraw. Moore argues that the circuit court erred when it denied the motions because counsel himself admitted that he was not acting in Moore's interests, but instead was acting to protect himself from claims of ineffective assistance of counsel. We conclude, however, that Moore waived his right to challenge the court's decision to deny these motions when he entered his guilty plea. A guilty plea waives any non-jurisdictional defenses to the crime charged. *State v. Princess Cinema of Milwaukee, Inc.*, 96 Wis. 2d 646, 651, 292 N.W.2d 807 (1980).

¶11 Further, the record of the plea hearing shows that while Moore and his counsel may have had some difficulty communicating prior to the plea hearing, they communicated freely at the time Moore entered his plea. Consequently, we also conclude that the circuit court did not err when it refused to allow Moore to withdraw his plea on this basis. For the reasons stated, we affirm the judgment and order of the circuit court.

By the Court.—Judgment and order affirmed.

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

