

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

APRIL 23, 1996

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

NOTICE

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

No. 95-3255

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PHILLIP E. BACON,

Defendant-Appellant.

APPEAL from an order of the circuit court for Douglas County:
MICHAEL T. LUCCI, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. Phillip Bacon appeals an order denying his motion to withdraw his guilty plea. He argues that the trial court lacked jurisdiction to sentence him, that his arrest was illegal and resulted from an illegal search, that the court did not follow mandatory arraignment procedures, that his trial counsel was ineffective, that his guilty plea was not knowingly

made and was induced by threats and that the trial court exhibited bias. We reject these arguments and affirm the order.

Bacon was initially charged with three counts of burglary as a repeater. Pursuant to a plea agreement, he pled guilty to one count of burglary and the other charges were read in for sentencing purposes.

The trial court properly accepted Bacon's guilty plea. Bacon had executed a plea agreement and waiver of rights form. The trial court questioned him regarding his understanding of the constitutional rights he waived by pleading guilty and the elements of the offense. Bacon twice stated that he was voluntarily changing his plea and that no one made promises or threats other than the plea agreement. The court followed the procedures set out in *State v. Bangert*, 131 Wis.2d 246, 261, 389 N.W.2d 12, 21 (1986), for taking a guilty plea.

Several of the issues Bacon raises on appeal were waived by the guilty plea. His challenges to the court's jurisdiction over his person, the validity of the arrest and the arraignment procedures were waived by entering a guilty plea. See *State v. Dietzen*, 164 Wis.2d 205, 210, 474 N.W.2d 753, 755 (Ct. App. 1991). Bacon did not preserve these issues by filing a motion challenging jurisdiction prior to entry of the plea. Bacon also entered the plea without having filed any motion to suppress evidence. Therefore, his right to challenge evidentiary rulings under § 971.31(10), STATS., was not preserved.

Bacon has not established any basis for withdrawing his plea. The trial court has authority to allow Bacon to withdraw his plea if he shows a "manifest injustice." See *State v. Booth*, 142 Wis.2d 232, 235, 418 N.W.2d 20, 21 (Ct. App. 1987). Bacon contends that his trial counsel was ineffective. The only specific allegation of ineffective assistance of counsel is that counsel waived the reading of the complaint and the preliminary hearing. Bacon concurred in the waiver of the preliminary hearing on the record. Bacon has established neither deficient performance nor prejudice to the defense from these waivers. His other conclusory allegations regarding his counsel's performance are not sufficiently supported by facts. See *State v. Saunders*, 196 Wis.2d 45, 49, 538 N.W.2d 546, 548 (Ct. App. 1995).

The record does not support Bacon's argument that his plea was coerced. He told the trial court at the plea hearing that his plea was voluntary and was not the product of threats or promises. In addition, some of the threats Bacon recites on appeal, that his father might be charged, that his attorney might withdraw and that his brother might withdraw bail are not impermissible "threats" such as would provide a basis for withdrawing the plea. A threat by the prosecutor or any other person to do a lawful act does not constitute an impermissible threat. See *State v. McKnight*, 65 Wis.2d 582, 591, 223 N.W.2d 550, 555 (1974); *U.S. v. Nuckols*, 606 F.2d 566, 569 (5th Cir. 1979).

Finally, the fact that the trial court denied numerous motions and writs Bacon filed does not establish bias or provide evidence of a manifest injustice. Bacon's complaints regarding how the hearing was conducted on his motion to withdraw his plea do not provide any basis for relief. Bacon did not ask for a continuance and the record does not show any prejudice that resulted from his being shackled while conducting the hearing by telephone.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.