

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

August 27, 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. 95-3357-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JUAN S. TORRES, a/k/a RODRIGUEZ,

Defendant-Appellant.

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

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

PER CURIAM. Juan S. Torres appeals from a judgment of conviction entered after he pled guilty to possession with intent to deliver a controlled substance (cocaine), contrary to §§ 161.16(2)(b)(1) and 161.41(1m)(cm)(2), STATS. He also appeals from an order denying his postconviction motion. Torres claims the trial court erred in denying his motion to withdraw his guilty plea. Because Torres has not established that failure to permit him to withdraw his guilty plea will result in a manifest injustice, we

cannot conclude that the trial court erroneously exercised its discretion in denying his motion. Therefore, we affirm.

I. BACKGROUND

Pursuant to a plea agreement, Torres pled guilty to possession with intent to deliver more than five grams, but not more than fifteen grams, of cocaine. The plea hearing occurred on March 28, 1995. At that time, Torres was informed that the maximum possible prison term that could be imposed was ten years.

During the sentencing hearing on May 11, 1995, the trial court discovered that on March 22, 1995, Torres had been convicted of an additional controlled substance charge. As a result of this conviction, Torres was automatically subject to a penalty enhancer, which doubled his potential maximum prison time. See *State v. Young*, 180 Wis.2d 700, 702-03, 511 N.W.2d 309, 310 (Ct. App. 1993), *aff'd*, 191 Wis.2d 393, 528 N.W.2d 417 (1995). The trial court explained this to Torres during the sentencing hearing, specifically informing Torres that by pleading guilty he was actually facing a potential maximum prison term of twenty years, rather than ten years. Torres stated that he understood this. The trial court proceeded to sentence Torres to a seven year prison term.

Post-sentencing, Torres filed a motion to withdraw his guilty plea. The trial court denied the motion, without holding a hearing, ruling that Torres had failed to show that the withdrawal of his guilty plea was necessary to correct a manifest injustice. Torres now appeals.

II. DISCUSSION

After the imposition of sentence, a defendant is not entitled to withdraw a guilty plea unless he or she establishes by "clear and convincing" evidence that there has been a "manifest injustice." *State v. Woods*, 173 Wis.2d 129, 136, 496 N.W.2d 144, 147 (Ct. App. 1992). Whether this standard has been met is left to the sound discretion of the trial court. *Id.* at 136-37, 496 N.W.2d at

147. We will not reverse the trial court's determination unless it erroneously exercised its discretion. *Id.*

We conclude that the trial court did not erroneously exercise its discretion in denying Torres's motion seeking plea withdrawal. Although it is undisputed that Torres did not know of the correct maximum potential prison term at the time of his plea, we agree with the trial court that under the circumstances of this case, Torres has failed to satisfy the manifest injustice standard.

A defendant can satisfy the manifest injustice standard by showing: (1) that he entered a plea involuntarily; or (2) that he received a sentence that he did not know could be imposed. *See Birts v. State*, 68 Wis.2d 389, 393, 228 N.W.2d 351, 353-54 (1975).¹ Torres has failed to show that either of these circumstances exists here. The record demonstrates that prior to sentencing, Torres was informed of the correct "potential punishment." Upon learning this information, Torres made no attempt to withdraw his plea, postpone the sentencing, or otherwise indicate that because of this new information he did not want to plead guilty. From these facts, we conclude that Torres's decision to proceed with sentencing, after he knew the correct potential punishment, was in essence a reaffirmation of his earlier plea in compliance with § 971.08(1)(a), STATS. Accordingly, Torres has failed to demonstrate that a manifest injustice exists to justify plea withdrawal. Hence, the trial court's decision to deny his motion was not an erroneous exercise of discretion.²

By the Court. – Judgment and order affirmed.

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

¹ Circumstances that satisfy the manifest injustice standard are not limited to these two situations, *see Birts v. State*, 68 Wis.2d 389, 393, 228 N.W.2d 351, 353-54 (1975); however, these are the only two situations that Torres claims are present in the instant case.

² We acknowledge that the trial court's specific reasoning employed to reach its conclusion that no manifest injustice was shown differs slightly from our analysis. This, however, is of no significance because the trial court reached the right result. *See State v. Holt*, 128 Wis.2d 110, 124, 382 N.W.2d 679, 687 (Ct. App. 1985).