

**COURT OF APPEALS  
DECISION  
DATED AND RELEASED**

JULY 2, 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. 95-3484-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

**STATE OF WISCONSIN,**

**Plaintiff-Respondent,**

**v.**

**GORDON A. ALEXANDER,**

**Defendant-Appellant.**

APPEAL from a judgment of the circuit court for St. Croix County:  
CONRAD A. RICHARDS, Judge. *Affirmed.*

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

PER CURIAM. Gordon Alexander appeals a judgment convicting him of theft by fraud. He argues that the trial court improperly exercised its discretion when it refused to allow him to withdraw his guilty plea before sentencing. We reject this argument and affirm the judgment.

Alexander was charged with obtaining a bank loan for his automobile dealership by fraudulently representing his interest in two cars that served as collateral. One of the cars had already been sold, and the other had been totally destroyed in an accident. Pursuant to a plea agreement, the State dismissed one count of felony issuance of bad checks and also agreed not to charge Alexander with two counts of felony bail jumping. Alexander pled guilty to one count of theft by fraud. At the sentencing hearing, the bank president asked to delay sentencing to allow additional time for Alexander to clear up some matters. Six days later, the bank president signed an affidavit stating that he had reviewed and was familiar with the floor plan note signed by Alexander on or around April 10, 1991, and that "when Mr. Alexander signed the Note on behalf of St. Croix Falls Ford-Mercury, the description portion of the document was blank was due to the fact that it was a renewal of previous notes." On the basis of that affidavit, Alexander filed a motion to withdraw his guilty plea. The bank president then wrote a letter<sup>1</sup> to the district attorney regarding the affidavit stating:

This affidavit was originally prepared by Mr. Alexander and retyped by the Bank with significant changes. I previously explained to you that #5 [the clause stating that description portion of the document was blank when Alexander signed it] was suppose to have been deleted. What is correct about #5 is the fact that it was renewal of previous notes. I have no knowledge of Mr. Alexander signing a bank note.

The trial court denied Alexander's motion to withdraw his plea.

Before sentencing, a defendant may withdraw a guilty plea for any fair and just reason. See *State v. Canedy*, 161 Wis.2d 565, 581-82, 469 N.W.2d 163, 170 (1991). While trial courts are encouraged to freely allow withdrawal of pleas before sentencing, "freely" does not mean "automatically." *Id.* The defendant must offer some reason other than a desire to have a trial. See *State v. Libke*, 60 Wis.2d 121, 127, 208 N.W.2d 331, 334 (1973). Some of the relevant

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<sup>1</sup> Alexander contends that this letter is not a part of the record on appeal. The letter is included at the fourth page of document 13.

factors to consider in determining whether a defendant has met his burden of showing a fair and just reason for withdrawing his plea are: (1) a swift change of heart; (2) an assertion of innocence; (3) a genuine misunderstanding of the guilty plea's consequence; (4) a hasty or confused entry of a plea; and (5) a showing of coercive tactics by defense counsel. See *State v. Shanks*, 152 Wis.2d 284, 290, 448 N.W.2d 264, 266-67 (Ct. App. 1989).

The trial court properly exercised its discretion when it refused to allow Alexander to withdraw his guilty plea on the basis of the bank president's affidavit. He recanted the key paragraph of the affidavit before the hearing on Alexander's motion to withdraw the plea. The affidavit does not state that the bank president had personal knowledge that Alexander signed a blank form. The bank president did not testify at the preliminary hearing. Rather, another bank employee testified that she went through the note "line by line" with Alexander before he signed it. The recanted affidavit does not undermine the factual basis for Alexander's plea. Rather, it appears that it momentarily provided an excuse for Alexander to attempt to back out of a plea agreement after he learned that the presentence report recommended substantial prison time.

Alexander established none of the factors set out in *Shanks*. He did not attempt to withdraw his plea until three months after he entered the plea. He has not asserted innocence or established a genuine misunderstanding of a guilty plea's consequences. He has not provided evidence that the plea was hasty or entered as a result of confusion or coercion. Rather, he relies entirely on the prospect of impeaching the bank president with the recanted affidavit. The trial court properly rejected the motion to withdraw the plea based only on unpersuasive potential impeachment of an insignificant witness.

*By the Court.* — Judgment affirmed.

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