

No. 96-0078-CR

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ERRATA SHEET

LESTER H. COOK,

Defendant-Appellant

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PLEASE TAKE NOTICE that the attached page three is to be substituted for page three in the above-captioned opinion which was released on January 30, 1997.

Dated this 4th day of December, 2006.

defendant fails to allege sufficient facts in his motion to raise a question of fact, or *presents only conclusory allegations*, or if the record conclusively demonstrates that the defendant is not entitled to relief" *State v. Bentley*, 201 Wis.2d 303, 309-11, 548 N.W.2d 50, 53 (1996) (emphasis supplied). A motion presents only conclusory allegations if it does contain factual assertions of sufficient specificity to allow the trial court to meaningfully assess the defendant's claim for plea withdrawal. *Id.* at 314, 548 N.W.2d at 54-55. Whether the motion alleges sufficient facts which, if true, would entitle the defendant to relief is a question of law, which we review de novo. *Id.* at 310, 548 N.W.2d at 53.

Cook does not claim that the trial court did not comply with the mandatory procedures for accepting a guilty plea. *See* § 971.08, STATS.; *State v. Bangert*, 131 Wis.2d 246, 261-62, 267-70, 274-75, 389 N.W.2d 12, 21, 23-24, 26-27 (1986). He claims that his plea was constitutionally infirm because it was entered unintelligently and involuntarily in that he did not understand that by pleading guilty to the amended charge, he could be facing a maximum penalty of ten years in prison. In his motion, Cook's claims are that he "is mildly retarded and functionally illiterate" and that, despite the trial court's statement to him that this "felony crime [is] punishable by imprisonment not to exceed ten years" and warning that it was not required to follow the attorney's recommendation of probation, he did not understand that he could be facing ten years in prison.