

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 11, 1997

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. 96-0489-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

YATHZEE D. INMAN,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TED E. WEDEMEYER, JR., and VICTOR MANIAN, Judges.¹ *Affirmed.*

Before Fine, Schudson and Curley, JJ.

¹ The Hon. Ted E. Wedemeyer, Jr., accepted Inman's guilty plea, sentenced him, and entered the judgment of conviction. The Hon. Victor Manian presided over and denied Inman's subsequent motion to withdraw his guilty plea.

PER CURIAM. Inman pleaded guilty to the charge of first-degree reckless homicide while armed, after he was waived into adult court. In this appeal from the judgment of conviction and an order denying his motion to withdraw his guilty plea, Inman presents the following argument. He claims he was entitled to an evidentiary hearing on his motion to withdraw his plea because he raised sufficient facts to question his trial counsel's assistance in failing to petition this court for leave to appeal from the juvenile court's decision to waive him into adult court. Inman asserts that had his trial counsel petitioned this court for leave to appeal from the waiver order, he would have been successful and therefore his counsel's failure constitutes ineffective assistance of counsel. He argues there was insufficient evidence to waive him into adult court on the charge of first-degree reckless homicide while armed, and had the juvenile court retained jurisdiction, he would no longer be incarcerated. We reject his arguments and affirm.

I. BACKGROUND.

On June 19, 1989, Bhupinderpal Ghuman, a clerk in a grocery store in Milwaukee, was fatally shot during the course of an armed robbery. Inman, who at the time of the shooting was fourteen years old, was implicated in the shooting. The State filed a delinquency petition alleging that Inman committed the offense of first-degree reckless homicide while armed, as a party to a crime. Approximately one month later, the State moved the juvenile court to waive Inman into adult court. The juvenile court conducted a hearing on the waiver petition and concluded that waiver was appropriate. Inman later pleaded guilty to the charge of first-degree reckless homicide while armed. The trial court sentenced him to twenty years incarceration.

In December 1995, Inman filed a motion to withdraw his guilty plea. On January 26, 1996, the trial court denied Inman's motion without a hearing. Inman premised his motion, in part, on his claim that his first counsel was ineffective for failing to advise him of the procedure to appeal the juvenile court's waiver decision. Using the two-pronged test from *Strickland v. Washington*, 466 U.S. 668 (1984), the trial court reasoned that regardless of whether Inman's trial counsel failed to advise him of his right to seek review of the juvenile court's waiver determination, Inman had not "met the second [prejudice] prong needed to obtain relief." The trial court concluded after reading the 100-page transcript of the waiver hearing that the juvenile court

made all the necessary findings, that the juvenile court did not base the waiver decision on speculation, and that the transcript supported a finding that the juvenile court properly exercised its discretion. Therefore, the trial court concluded that Inman was not entitled to an evidentiary *Machner* hearing on his motion.²

² See *State v. Machner*, 92 Wis.2d 797, 285 N.W.2d 905 (Ct. App. 1979).

II. ANALYSIS.

The controlling issue that Inman raises is whether the trial court should have granted him an evidentiary hearing on his motion to withdraw his guilty plea. We conclude the trial court properly denied his motion without a hearing.

The standard for reviewing this issue was recently stated in *State v. Bentley*, 201 Wis.2d 303, 548 N.W.2d 50 (1996):

If the motion on its face alleges facts which would entitle the defendant to relief, the circuit court has no discretion and must hold an evidentiary hearing. Whether a motion alleges facts which, if true, would entitle a defendant to relief is a question of law that we review de novo.

However, if the motion fails to allege sufficient facts, the circuit court has the discretion to deny a postconviction motion without a hearing.

Id. at 310-11, 548 N.W.2d at 53 (citations omitted). Further, if “the 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, the trial court may in the exercise of its legal discretion deny the motion without a hearing.” *Id.* at 309-10, 548 N.W.2d at 53 (citation omitted).

For a defendant to succeed in a plea withdrawal motion based on a ineffective assistance of counsel claim, the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), must be satisfied. That is, a defendant “must show that counsel’s performance was both deficient and prejudicial.” *Bentley*, 201 Wis.2d at 312, 548 N.W.2d at 54. Further, if a defendant fails to show one of the prongs, the court need not address the other. See *Strickland*, 466 U.S. at 697.

In order to satisfy the prejudice prong of the *Strickland* test, the defendant seeking to withdraw his or her plea must allege facts to show “that there is a reasonable probability that, but for the counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.”

Bentley, 201 Wis.2d at 312, 548 N.W.2d at 54 (citation omitted).

In his motion seeking his plea withdrawal, Inman alleged that he “was unaware, because he was not informed by his attorney, that the Court of Appeals *would* review the waiver order prior to the commencement of criminal proceedings.” (Emphasis in original.) He further alleged that:

Historically, the Court of Appeals in District I has granted virtually every interlocutory appeal filed challenging a juvenile waiver order. It seems unlikely that Inman's request for review of his waiver would have been denied, given the novelty of his case, which was, as all parties agreed, the first waiver in Milwaukee County of a child age 14. The record in the trial court contains no indication that trial counsel, Inman, or the court discussed challenging the waiver order, or that the right to challenge the waiver order would by direct appeal would [sic] be foreclosed by entry of the guilty plea.

Inman acknowledges in his appellate brief that by entering a guilty plea he has waived his right to appeal the waiver issue. He now argues, however, that had counsel informed him of the appeal procedure, he would have brought an appeal and he contends his appeal would have met with success. Inman posits that the juvenile court judge erred by basing his findings on speculation. He claims the juvenile judge based his decision on speculation when the court stated, after determining that six-and-one-half years was the maximum period of supervision in juvenile court, “I find that there is a significant chance that 6 and ½ years is not enough time to address the needs of the juvenile and to protect the interest of society.”

Thus, his claim of ineffective assistance of counsel is grounded on his allegations that he was not told of the appeal process which, he urges, constitutes deficient performance by counsel. Inman further posits that this meets *Strickland's* prejudice prong because he assumes his petition for leave to appeal would have been successful. As relief for these perceived deficiencies, Inman argues it is not enough that his case be remanded to the adult court where he would be allowed to merely withdraw his guilty plea, but rather he insists that his case must be returned to juvenile court. Because he is now 21 years old, he contends he would be released from incarceration.

We first note that Inman's motion to withdraw his guilty plea based on ineffective assistance of counsel is comprised almost entirely of conclusory allegations. These allegations are insufficient under *Bentley* to require the trial court to hold an evidentiary hearing. *Bentley*, 201 Wis.2d at 309-10, 548 N.W.2d at 53 (citation omitted). Our supreme court "has long held that the facts supporting plea withdrawal must be alleged in the petition and the defendant cannot rely on conclusory allegations, hoping to supplement them at a hearing." *Id.* at 313, 548 N.W.2d at 54.

When ruling on Inman's motion, however, did not have the benefit of the supreme court's recent ruling in *Bentley*. The trial court read the entire waiver hearing transcript and concluded that Inman had not shown the prejudice necessary under *Strickland*, because the juvenile court's waiver decision was proper. See *J.A.L. v. State*, 162 Wis.2d 940, 960, 471 N.W.2d 493, 501 (1991) (discussing juvenile court's discretionary decision to waive juvenile jurisdiction). The trial court correctly noted in its decision that: "A juvenile court may waive jurisdiction based solely upon the seriousness of the offense." After reviewing the transcript, the trial court adopted the findings of the juvenile court, specifically that: "this is an extraordinary serious offense, ... clearly a violent offense ... an aggressive offense ... a premeditated and willful offense." The transcript also revealed that the juvenile court took into consideration the facts of both the charged crime—a homicide with two shots fired at close range, and Inman's other subsequent actions involving two additional armed robberies in as many days and a third several weeks later.

The trial court, in denying Inman's motion, concluded that it was "satisfied beyond a reasonable doubt that the Court of Appeals would have found that the juvenile court properly exercised its discretion in waiving

jurisdiction and that there was a reasonable basis for doing so.” The trial court further stated that it was “satisfied that the Court of Appeals would have upheld this determination finding that the juvenile court's conclusion was reasonable under all the circumstances and that the availability or unavailability of extended jurisdiction would not have made a difference.” Finally, the trial court concluded that Inman had not established that he was prejudiced under *Strickland*. We agree. It would have been futile for the trial court to afford Inman a hearing when his motion did not establish a sufficient basis for withdrawal of his plea. As the trial court ruled, even assuming that trial counsel failed to explain the waiver appeal process to Inman, Inman nonetheless failed to meet the prejudice prong required by *Strickland*. As a consequence, the trial court was not obligated to furnish him with an evidentiary hearing for his motion to withdraw his guilty plea. Accordingly, we affirm.

By the Court. – Judgment and order affirmed.

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