

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

NOTICE

October 23, 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.

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

No. 96-2870-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DENNIS J.C. FREDRICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Wood County:
EDWARD F. ZAPPEN, Judge. *Affirmed.*

Before Eich, C.J., Dykman, P.J., and Vergeront, J.

PER CURIAM. Dennis Fredrick appeals from a judgment convicting him of causing great bodily harm to another while driving intoxicated. Fredrick pleaded no contest to the charge. The court entered judgment after a Phase II responsibility hearing on Fredrick's plea of not guilty by reason of mental

disease or defect. The sole issue is whether the trial court reasonably found that Fredrick failed to meet his burden on that issue. We affirm.

Fredrick waived his right to a jury trial and the issue was tried to the court. The parties stipulated that the only witness would be Dr. Geoff Wandry, a court-appointed psychiatrist. Dr. Wandry testified that when Fredrick committed the crime, he could understand the wrongfulness of his actions, but was likely unable to conform his conduct to legal requirements. Dr. Wandry described Fredrick as an alcoholic with a significant perceptual thought disorder at the time of the accident. He added that Fredrick's thought disorder alters his behavior. Essentially, Dr. Wandry believed that Fredrick could not conform to the laws regarding drunk driving on the day of the accident because his thought disorder prevented him from realizing that he was drinking to excess. Dr. Wandry's opinion was predicated to a substantial extent on his inference, from various circumstances, that Fredrick was not taking his anti-psychotic medication at the time of the accident. As noted, no other witnesses testified. The trial court concluded that Dr. Wandry's testimony did not come close to proving Fredrick's responsibility defense.

Section 971.15(1), STATS., provides that a person is not responsible for criminal conduct if, at the time of such conduct as a result of mental disease or defect, the person lacks substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law. The defendant has the burden of proving a defense under this section to a reasonable certainty by the greater weight of the credible evidence. *State v. Sarinske*, 91 Wis.2d 14, 47, 280 N.W.2d 725, 740 (1979). The question whether the defendant has met this burden is one of fact, and will be reviewed as such. *Id.* at 48, 280 N.W.2d at 740.

No basis exists for reversing the trial court's finding. In determining whether the defendant has satisfactorily established a responsibility defense under § 971.15(1), STATS., the trier of fact determines the weight and credibility of the testimony on that issue. *Sarinske*, 91 Wis.2d at 47, 280 N.W.2d at 740. This rule applies even where, as here, the testimony is undisputed in the defendant's favor. *Id.* at 48-49, 280 N.W.2d at 741. Here, the trial court chose not to accord Dr. Wandry's opinion any weight, which the court may do. Without that opinion, Fredrick had no evidence to satisfy his burden.

By the Court.—Judgment affirmed.

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

