

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

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

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.

No. 97-1666-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MARTIN FORAL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed and cause remanded with directions.*

FINE, J. Martin Foral appeals from a judgment entered on a “no contest” plea, and from the trial court’s denial of his motion to withdraw that plea. Convicted of fourth-degree sexual assault, *see* § 940.225(3m), STATS., and placed on probation, Foral claims that his plea was not entered knowingly because he was not informed that his probation agent would seek to require him, as a condition of

probation, to cooperate with the sexual-offender-registration program. *See* §§ 973.048 & 301.45, STATS. We affirm the judgment and the trial court's order denying Foral's motion to withdraw his plea, but remand this case to the trial court for the entry of an order under § 973.09(3)(a), STATS.

Foral's only complaint on appeal is that as a condition of probation he is being required to “cooperate with Sex Offender Registration with the Dept. of Justice prior to discharge, and with Milwaukee and other local police authorities as directed” by Foral's probation agent. He claims that neither the trial court nor his attorney told him that he would be subject to this condition if he accepted conviction *via* a “no contest” (or any other) plea. Thus, he seeks to withdraw his plea, asserting “manifest injustice.” *See State v. Damaske*, ___ Wis.2d ___, ___, 567 N.W.2d 905, 915 (Ct. App. 1997) (“After sentencing, a defendant who seeks to withdraw a guilty or no contest plea carries the heavy burden of establishing, by clear and convincing evidence, that the trial court should permit the defendant to withdraw the plea to correct a ‘manifest injustice.’”) (quoted source omitted).

Putting aside the question of whether compliance with the requirements of §§ 973.048 & 301.45, STATS., is a direct or collateral consequence of a conviction, *see State v. Myers*, 199 Wis.2d 391, 394, 544 N.W.2d 609, 610 (Ct. App. 1996), which we do not decide, *see Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663, 665 (1938) (only dispositive issue need be addressed), Foral was *not* subject to sex offender registration, as the parties agree. The attempt by Foral's probation agent to subject Foral to that registration was thus unlawful. Accordingly, we remand this case to the trial court for entry of an order pursuant to § 973.09(3)(a), STATS. (“Prior to the expiration of any probation period, the court, for cause and by order, may extend probation for a stated period or modify the terms and conditions thereof.”), specifying that Foral is not subject to the requirements of §§ 973.048 &

301.45. *See State v. Kluck*, 210 Wis.2d 1, 9, 563 N.W.2d 468, 471 (1997) (trial court has power to modify terms of probation).

The sole ground upon which Foral sought to withdraw his plea was his probation agent's attempt to subject him to §§ 973.048 & 301.45, STATS. That condition, unlawful under the circumstances of this case, will be removed by the trial court. Accordingly, Foral has not demonstrated any reason—no less “manifest injustice”—to withdraw his plea. The judgment and the trial court's order denying Foral's motion to withdraw his plea is, accordingly, affirmed.

By the Court.—Judgment and order affirmed, cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

