

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 15, 1998

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. 98-1936-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KEVIN L. GUIBORD,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County:
BENJAMIN D. PROCTOR, Judge. *Affirmed.*

CANE, C.J. Kevin Guibord appeals from the trial court's order denying the motion to withdraw his no contest pleas to disorderly conduct and bail jumping. He contends the trial court improperly exercised its discretion by failing to consider his argument that his plea was involuntary because of the trial court's involvement in the plea process. He therefore requests this court to again remand

the matter to the trial court for consideration of the motion to withdraw his pleas. This court rejects his arguments and affirms the order.

As support for the motion to withdraw his pleas, Guibord refers to the proceedings when the trial court called the district attorney and Guibord, who was representing himself,¹ into his chambers for a discussion on the procedures to be followed in the jury trial scheduled to begin that morning. When the trial court learned that Guibord's defense was based solely on a legal basis rather than a factual dispute for the jury, it suggested that it would be advisable to simply make these arguments to the court. After much discussion in chambers, Guibord agreed to a procedure of entering no contest pleas, and the trial court would withhold any finding, allowing Guibord and the district attorney to file briefs addressing Guibord's legal challenge to the charges. At the beginning of the discussion in chambers when Guibord inquired whether this meant he would forego a jury trial, the trial court responded, "I mean, hell, you're going to be found guilty and it's a waste of the taxpayers' money. It doesn't sound like you dispute the facts."² In the motion to withdraw his pleas, Guibord contended that these remarks and the trial court's involvement in chambers constituted improper participation in the plea process.

¹ Two separate attorneys had made several appearances with Guibord prior to the scheduled trial date, but had been allowed to withdraw from the case when Guibord indicated he did not want to be represented by counsel.

² The facts are very basic. A police officer observed Guibord urinating on a public street, and when the officer confronted him, Guibord responded by swearing at the officer. This was the basis for the disorderly conduct charge. Because this occurred while Guibord was released on bail pending other charges, it also constituted the basis for the bail jumping charge. Guibord did not dispute the facts, but argued that he was exercising his right to free speech and that therefore the complaint should be dismissed.

Contrary to Guibord's assertions on appeal, at the remanded hearing to consider his motion to withdraw the pleas, the trial court did address the argument that it had inappropriately involved itself in the plea process resulting in an involuntary plea. The trial court explained that as part of its management of the case, it was simply discussing with the parties on the morning of the jury trial what their respective positions were and what witnesses they were going to call. The trial court observed that when it became apparent that Guibord had no dispute with the facts leading to his arrest, but only wanted to make legal challenges, it suggested a procedure to avoid an unnecessary jury trial.

The court recalled that after much discussion and a series of recesses allowing Guibord to reflect on their discussion, the parties agreed to a procedure whereby Guibord would enter conditional no contest pleas to the charges and both sides would submit briefs on the legal challenge. If the court agreed with Guibord's legal challenge, the complaint would be dismissed. If it did not agree, the pleas would be accepted and Guibord could seek appellate review. The trial court concluded that there was nothing improper about this involvement in chambers because it was not interjecting itself in plea negotiations, but rather was attempting to manage the case by trying to determine what issues were going to be presented to the jury. Thus, the heart of Guibord's appeal fails because the trial court did address the basis for his motion to withdraw the pleas.

This court also rejects Guibord's argument that the court's comments in chambers rendered his plea involuntary. After reviewing the transcript of the October 21, 1996, hearing, including the discussion in chambers and the subsequent colloquy in court when Guibord entered his pleas, this court is satisfied the trial court's discussion in chambers did not render the pleas involuntary. The trial court was properly managing a jury trial scheduled to begin that morning and

determining the issues to be submitted to the jury and how the case should proceed. Upon learning that Guibord was raising legal issues only, the trial court reasonably suggested an alternate procedure for resolving this dispute. However, the trial court repeatedly reminded Guibord during these discussions in chambers and later again in court that he could still proceed with a jury trial. Although the trial court remarked that a jury would probably find him guilty, it was simply making an observation based on Guibord's statement that he was not disputing the underlying facts leading to his arrest.

After extensive discussion in chambers, repeated recesses allowing Guibord to think about the court's suggested procedure and extensive colloquy in court, the trial court accepted Guibord's no contest pleas to disorderly conduct and bail jumping with the understanding that it would address his legal challenges. Contrary to Guibord's assertions, the trial court did not pressure him to waive a jury trial and enter no contest pleas. The trial court carefully and repeatedly explained to him his rights, including his right to still proceed with a jury. With this understanding, Guibord's agreement to enter no contest pleas and make his challenge to the charges on a legal basis by submitting briefs to the court for its determination rather than submitting the matter to a jury was completely voluntary.

In conclusion, this court rejects Guibord's claim that the trial court failed to address his arguments for withdrawing the plea and also rejects his claim that the trial court improperly involved itself in plea negotiations rendering the pleas involuntary. Thus, the order denying Guibord's motion to withdraw his no contest pleas to disorderly conduct and bail jumping is affirmed.

By the Court.—Order affirmed.

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

