

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 7, 2005

Cornelia G. Clark
Clerk of Court of Appeals

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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2004AP3229-CR
2004AP3230-CR
2004AP3231-CR
2004AP3232-CR
2004AP3233-CR
2004AP3234-CR
2004AP3235-CR**

**Cir. Ct. Nos. 2003CM2867
2003CM3066
2003CM3322
2003CM3738
2003CM3947
2003CM4639
2003CM4697**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RAKHODA AMANI BENI,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County:
MARSHALL B. MURRAY, Judge. *Affirmed.*

¶1 CURLEY, J.¹ Rakhoda Amani Beni appeals from a judgment convicting him of one count of battery, eleven counts of bail jumping, and three counts of violating a domestic abuse injunction. Amani Beni also appeals from an order denying his request for postconviction relief. He contends that he was not provided with a qualified interpreter, as required by WIS. STAT. § 885.38 (2003-04);² that the trial court abused its discretion when it failed “to voir dire the interpreter”; and that § 885.38 requires court-appointed interpreters to be certified. Because Amani Beni has failed to point to any specific deficiencies, prejudice that he suffered, or injustice that resulted from the appointment of the interpreter, and has failed to establish that his guilty pleas were not knowingly, voluntarily, and intelligently entered, this court affirms.

I. BACKGROUND.

¶2 On August 15, 2003, Amani Beni pled guilty to one count of battery, eleven counts of bail jumping, and three counts of violating a domestic abuse injunction. The trial court conducted the plea colloquy with the help of an interpreter, Matthew Eslami, of the International Institute of Wisconsin, who had been serving as an interpreter in the case since early April of that year.³ Eslami interpreted from English to Farsi, Amani Beni’s native language. On October 2,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

² All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

³ Eslami swore under oath that he would make a true and impartial interpretation.

2003, at a hearing set for the return of a doctor's report, and after the trial court determined that Amani Beni was competent to proceed to sentencing, Amani Beni's trial counsel raised an "issue" with regard to Eslami for the first time:

[TRIAL COUNSEL]: Your Honor, there is an issue I'm going to raise at this point in time which has come to my attention following the last court hearing again arose today.

....

I'm aware from translation from [Farsi] to English is not going to be perfect translation given the incredible differences in the language.

But following the last court hearing, I was advised by the interpreter for the victim that perhaps what is being said in court both to Mr. Amani [B]eni and his responses were not accurate; and also, that there may have been some shortcuts or paraphrasing of translation which I cannot accept as Mr. Amani [B]eni's counsel.

And I believe that issue also came up today in reviewing the report. There was paraphrasing; and I stated no, that legal documents and what have you said in court have to be –

THE COURT: Slow down and we'll do a little bit at a time.

I think what you're suggesting is that you have a new interpreter.

[TRIAL COUNSEL]: I spoke with Mr. Eslami this afternoon, shared those concerns and also shared concerns perhaps there was some interjections of personal commentary and personal advice to Mr. Amani [B]eni, especially in court proceedings, and [sic] a very emotionally charged situation such as this.

Those are my concerns. I wanted to make a record.

I spoke with [the assistant district attorney] about that the last court date, and shared that with [the other

assistant district attorney] this afternoon and Mr. Eslami as well.

THE COURT: So you're concerned that you need a new interpreter.

....

The trial court then addressed Eslami:

THE COURT: Are you a friend of the family; or do you come through our interpreter's group, certified?

....

[ESLAMI]: No, I'm not.

THE COURT: You're hired through the court system?

[ESLAMI]: Yes.

....

THE COURT: Are you able to interpret word for word as someone speaks to anyone in court?

....

[ESLAMI]: Yes.

....

THE COURT: [Trial counsel's] concerns are Mr. Beni is not getting word for word what is being said to him in court.

....

[ESLAMI]: I think I just told the public defender that I will ask her I do not wish – after today, I do not wish to be an interpreter of this case because I believe I don't want to be first; and I believe the D.A. [sic] is dead wrong, and I don't want to be –

I think I do. I think – I believe I do interpret word by word. I think the defendant understands what I’m saying. I don’t believe I help, or I interject, or I paraphrase.

This doesn’t make sense to me. How can they say that simply because their client telling them. It isn’t correct.

I have no problem with there being another interpreter. ...

....

THE COURT: You ask to withdraw from this case?

....

[ESLAMI]: Yes.

....

TRIAL COURT: Granted. As long as you can find someone else from the agency through the courts to cover the case on the next court date.

Thereafter, a new interpreter was presumably found, and the case proceeded accordingly. No other concerns or “issues” were raised regarding the interpreter’s services.

¶3 Amani Beni was eventually sentenced in December 2003. In November 2004, he filed a postconviction motion seeking “[d]ismissal (without prejudice) of all convictions” on the grounds that the interpreter provided by the court was not adequate, and the trial court “did not make a proper record of the qualification[s] of the interpreter, such that a reviewing court could determine

whether the interpreter was in fact properly qualified.”⁴ He insisted that “[b]y not creating a record of the qualifications of the expert, the qualifications of the interpreter are left in doubt.” He also contended that, in his case, there appeared to be “some question as to the ability of the interpreter to interpret the proceedings[,]” pointing to the “issue” raised by trial counsel, and concluded that “it cannot be said that deficient interpreting could not have worked to the prejudice of [Amani Beni][,]” contending that his “decision to plea may not have been based on a clear understanding of the DA’s plea offer.”

¶4 The trial court denied the motion, concluding:

Although the defendant alleges that Mr. Eslami’s interpreter services were inadequate, there has been no showing that Mr. Eslami either failed to tell the defendant something that he was supposed to or told him something incorrect such that it affected the defendant’s understanding of the nature of the charges he was facing, the terms of the plea agreement, or the constitutional rights he was waiving. The defendant fails to identify exactly what he was confused about with any specificity. In the absence of providing the court with any specifics about his claim other than a general assertion that the interpreter *may have been* inadequate, the defendant does not state a viable claim for relief.

Amani Beni now appeals.

⁴ Later, on appeal, Amani Beni clarifies the remedy he seeks and argues he should be allowed to withdraw his guilty pleas.

II. ANALYSIS.

¶5 Amani Beni contends that he was not provided with a qualified interpreter, as required by WIS. STAT. § 885.38;⁵ that the trial court abused its discretion when it failed “to voir dire the interpreter”; and that § 885.38 requires that court-appointed interpreters should be certified.⁶ This court is not persuaded.

¶6 “The selection of a suitable person as an interpreter is within a trial court’s discretion.” *State v. Besso*, 72 Wis. 2d 335, 343, 240 N.W.2d 895 (1976).

As such:

On review, the burden is on the appellant to show that the interpreter was in any way deficient. A trial court’s discretion in the choice of an interpreter will not be upset unless there is evidence showing that a defendant has been prejudiced by the interpreter’s performance. Although a trial court has the duty to choose the most competent and the least biased person available, the defendant must show that some injustice has resulted because of the appointment of the interpreter.

⁵ WISCONSIN STAT. § 885.38(3)(a) provides, in part: “In criminal proceedings ... if the court determines that the person has limited English proficiency and that an interpreter is necessary, the court shall advise the person that he or she has the right to a qualified interpreter and that, if the person cannot afford one, an interpreter will be provided at the public’s expense if the person is ... [a] party in interest.”

⁶ Amani Beni also raises an “additional issue” that he concedes has not been “fully briefed by the defendant in this case.” He asserts that “there is the question of whether the Wisconsin supreme court [sic] has met the mandate of [WIS. STAT. §] 885.38(2), which requires it to ‘establish the procedures and policies for the recruitment, training, and certification of persons to act as qualified interpreters in a court proceeding.’” Exactly what relief Amani Beni may be requesting by raising such an “issue” is unclear; however, as it is not fully briefed or properly before this court on appeal, it will not be considered. *See, e.g., State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).

Id. (citations omitted).

¶7 Moreover, “[t]he withdrawal of a guilty plea is not a ‘right,’ but is addressed to the sound discretion of the trial court and will be reversed only for an [erroneous exercise] of that discretion.” *State v. Booth*, 142 Wis. 2d 232, 237, 418 N.W.2d 20 (Ct. App. 1987). After sentencing, the defendant is required to show a “manifest injustice” in order to be entitled to plea withdrawal. *Id.* at 235; *State v. Nawrocke*, 193 Wis. 2d 373, 378, 534 N.W.2d 624 (Ct. App. 1995). While “[a] plea [that] is not knowingly, voluntarily[,] or intelligently entered is a manifest injustice[,]” *State v. Giebel*, 198 Wis. 2d 207, 212, 541 N.W.2d 815 (Ct. App. 1995), that showing must be made by clear and convincing evidence, and the burden of proof is on the defendant, *see State v. Rock*, 92 Wis. 2d 554, 559, 285 N.W.2d 739 (1979). “The ‘manifest injustice’ test is rooted in concepts of constitutional dimension, requiring the showing of a serious flaw in the fundamental integrity of the plea.” *Nawrocke*, 193 Wis. 2d at 379.

¶8 Amani Beni has failed to point to any specific deficiencies, prejudice that he suffered, or injustice that resulted from the appointment of Eslami. He merely contends: “*If* Eslami did not adequately convey the contents of the plea questionnaire and adequately explain the ramifications of a guilty plea to the defendant, it cannot be concluded that the pleas were entered in a voluntary and intelligent fashion.” (Emphasis added.) He also asserts: “Without being able to prove that the defendant understood in Farsi the terms of his bail and the terms of the domestic abuse injunction, convictions based on violations thereof should be vacated and the charges dismissed.” He also insists that “[b]y not creating a

record of the qualifications of the expert, the qualifications of the interpreter are left in doubt, and ... there is absolutely no way a court of appeals can confirm whether a qualified interpreter was appointed to assist the defendant in this case.”⁷ But the burden here is on Amani Beni. Yet, there are no affidavits, no specific references to any evidence of deficiencies or resulting prejudice, and no specific claims of error in regard to the interpreter’s performance. General, unspecified claims and speculation fall woefully short of satisfying the requisite burden. Without more, this court cannot possibly conclude that the trial court erroneously exercised its discretion in employing Eslami’s interpreter services, and that Amani Beni has established, by clear and convincing evidence, that his pleas were not knowingly, voluntarily, and intelligently entered.

¶9 Finally, assuming that Amani Beni’s statutory arguments were properly raised below, this court disagrees with his interpretation that WIS. STAT. § 885.38 requires that court-appointed interpreters should be certified. While

⁷ Amani Beni contends that the trial court’s failure to question the interpreter’s qualifications on the record automatically establishes that the trial court erroneously exercised its discretion:

The statute [WIS. STAT. § 885.38] repeatedly refers to the need for “qualified interpreters.” It is thus clear the statute requires appointed interpreters to be *qualified* in their ability to interpret. How can a judge know whether an interpreter is qualified unless there is an inquiry into his or her training and abilities?

After pointing to WIS. STAT. § 906.04, which provides that “[a]n interpreter is subject to the provisions of chs. 901 to 911 relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true translation[,]” Amani Beni contends that “[b]efore a witness may testify as an expert, there must be a foundation laid as to his or her qualifications. Arguably, this provision requires that the same be done for an interpreter.”

§ 885.38(3)(a) provides that the trial court shall advise a defendant with limited English proficiency that he or she “has the right to a qualified interpreter,” the word “certified” never appears in the language of that paragraph. Indeed, the definition of “qualified interpreter” appears in the statute as follows:

“Qualified interpreter” means a person who is able to do all of the following:

1. Readily communicate with a person who has limited English proficiency.
2. Orally transfer the meaning of statements to and from English and the language spoken by a person who has limited English proficiency in the context of a court proceeding.
3. Readily and accurately interpret for a person who has limited English proficiency, without omissions or additions, in a manner that conserves the meaning, tone, and style of the original statement, including dialect, slang, and specialized vocabulary.

§ 885.38(1)(c).

¶10 Amani Beni contends, however, that other states require the use of certified interpreters, the federal court system requires certified interpreters in certain languages, and WIS. STAT. § 885.38 “can also be interpreted to require that court-appointed interpreters should the [sic] certified.” He cites the language of § 885.38(2), which provides, in part, that “[t]he supreme court shall establish the procedures and policies for the recruitment, training, and certification of persons to act as qualified interpreters in a court proceeding and for the coordination, discipline, retention, and training of those interpreters[.]” before contending that “[a]lthough this provision does not explicitly require court reporters to be certified,

it suggests that being certified is part of the process of becoming a ‘qualified’ interpreter.” As Amani Beni concedes, however, WIS. STAT. § 758.19 indicates that not all interpreters will be certified, in that the statute sets forth different rates of compensation for certified and uncertified interpreters. As a result, Amani Beni insists that there is “ambiguity within the statutes as to whether court interpreters are required to be certified.” This court disagrees—there is nothing in the plain language of the statutes that *requires* interpreters to be certified, and nothing suggesting as much. Insofar as Amani Beni is suggesting a change in the law or the language of the statutes, that is a matter beyond the reach of this court. Accordingly, the trial court is affirmed.

By the Court.—Judgments affirmed.

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

