

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 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 No. 2004AP3270-CR

Cir. Ct. No. 2003CF2015

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TOMMY DONNELL FORREST,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEAN W. DIMOTTO, Judge. *Affirmed.*

Before Wedemeyer, P.J., Fine and Kessler, JJ.

¶1 PER CURIAM. Tommy Donnell Forrest appeals from a judgment entered after he pled no contest to first-degree sexual assault, while armed, and second-degree sexual assault of a child, contrary to WIS. STAT. §§ 940.225(1)(b)

and 948.02(2) (2003-04).¹ He also appeals from an order denying his postconviction motion. Forrest claims that his no contest pleas were invalid because the court failed to inform him that any initial confinement portion of the sentence cannot be reduced by good time or parole. He also claims that his not guilty by reason of mental disease or defect plea was never formally withdrawn before he entered his no contest pleas. Because the trial court is not obligated to inform Forrest of the collateral consequences of his plea, and because Forrest failed to adequately develop his claim that his insanity plea had not been properly withdrawn, we affirm.²

BACKGROUND

¶2 On April 4, 2003, Forrest was charged with two counts of first-degree sexual assault, while armed, and two counts of second-degree sexual assault of a child. On May 6, 2003, he entered a plea of not guilty and not guilty by reason of mental disease or defect. The court ordered a competency evaluation.

¶3 On June 5, 2003, the competency evaluation and report indicated that Forrest was competent. On August 26, 2003, Forrest pled no contest to one

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

² While this appeal was pending, at Forrest's request, his appellate counsel, Thomas J. Erickson, filed a motion to withdraw as counsel. This court entered an order advising Forrest of the consequences of such action and requested that Forrest advise this court if he still wanted us to grant the motion to withdraw. On November 1, 2005, we received a letter from Forrest that he did not want to have counsel withdraw from this appeal, wanted the appeal to proceed, and requested that the motion to withdraw be quashed. We construe Forrest's letter to constitute a motion to withdraw the request seeking that his counsel be permitted to withdraw. Accordingly, this appeal will proceed as if no request to withdraw was received. If Attorney Erickson wishes to pursue the motion to withdraw contrary to Forrest's stated desire, Erickson may file a motion seeking reconsideration.

count of first-degree sexual assault, while armed, and one count of second-degree sexual assault of a child. The other two counts were dismissed.

¶4 On October 10, 2003, Forrest was sentenced to forty years in prison on the first count, broken down as thirty years' initial confinement, followed by ten years' extended supervision. He was sentenced to twenty years on the second count, broken down as fifteen years' initial confinement and five years' extended supervision, consecutive to count one. Judgment was entered.

¶5 Forrest filed a postconviction motion seeking plea withdrawal on the grounds that his plea was not knowingly entered because he was not informed of the effect of truth-in-sentencing. The trial court denied the motion, ruling that it is not obligated to inform a defendant that good time/parole does not apply to the initial confinement period because that is not a direct consequence of the plea. An order was entered denying the motion. Forrest now appeals.

DISCUSSION

A. Plea Withdrawal

¶6 Forrest contends he should be allowed to withdraw his plea because the trial court failed to explain to him the effects of a sentence under the truth-in-sentencing law. He argues that he did not know the sentence imposed would not be subject to good-time credit or parole, and that he did not know that he would be serving “day for day” the sentence imposed. He contends that the amount of potential punishment is a direct consequence and, therefore, a defendant should be informed that under the truth-in-sentencing law, good time and parole would not apply to his initial confinement period.

¶7 This same issue was recently resolved in *State v. Plank*, 2005 WI App 109, 282 Wis. 2d 522, 699 N.W.2d 235. In *Plank*, we held that a defendant is not entitled to withdraw his plea even if the trial court fails to inform him that, under truth-in-sentencing, he is ineligible for parole or good-time credit. *Id.*, ¶¶12-17. We reached that determination after concluding that this information was a collateral, rather than a direct, consequence of the plea. *Id.*, ¶¶13, 17. A trial court is expected to inform a defendant of all the direct consequences of a plea, but is not required to inform him of all the collateral consequences of a plea. *Id.*, ¶13.

¶8 Thus, because Forrest's complaint is that the trial court did not inform him about a *collateral* consequence of his plea—that there is no parole or good time under truth-in-sentencing—his argument is without merit. Forrest's mistaken belief about the truth-in-sentencing law is not a basis for plea withdrawal. Therefore, the trial court did not err in failing to inform Forrest of the “day for day” effect of truth-in-sentencing. Accordingly, Forrest's only basis for asserting that his pleas were improper fails and there is no basis upon which to further review his claim for plea withdrawal.

B. Failure to Withdraw Insanity Plea

¶9 Forrest next claims that his guilty plea by reason of mental disease or defect was not withdrawn and therefore this case should be remanded for further proceedings relative to the special plea. We decline Forrest's request.

¶10 This issue was not raised in the trial court and therefore will not be addressed for the first time on appeal. See *State v. Carprue*, 2004 WI 111, ¶36, 274 Wis. 2d 656, 683 N.W.2d 31. Further, Forrest failed to adequately brief this issue and did not provide any citation to authority in support of his claim. On this

additional basis, we reject his argument. *See State v. Shaffer*, 96 Wis. 2d 531, 545-46 n.3, 292 N.W.2d 370 (Ct. App. 1980).

By the Court.—Judgment and order affirmed.

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

