

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 2, 2006**

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. 2004AP2631-CR**

**Cir. Ct. No. 2003CF3914**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**OMAR CARRASQUILLO,  
A/K/A ERNESTO RIVERA,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: MARY M. KUHNMUENCH, Judge. *Affirmed.*

Before Fine, Curley and Kessler, JJ.

¶1 PER CURIAM. Omar Carrasquillo, also known as Ernesto Rivera, appeals from a judgment of conviction for second-degree intentional homicide, and from a postconviction order summarily denying his motion for plea withdrawal. The issue is whether Carrasquillo has clearly and convincingly shown

that allowing him to withdraw his guilty plea is necessary to prevent a manifest injustice. We conclude that Carrasquillo has not clearly and convincingly proven his claim – that he did not realize that by pleading guilty he was waiving his right to prove self-defense – which is also belied by the record. Therefore, we affirm.

¶2 Carrasquillo admitted that he repeatedly shot Robert Puente at close range and killed him incident to a drug transaction.<sup>1</sup> Carrasquillo was originally charged with first-degree intentional homicide while armed. Incident to a plea bargain, Carrasquillo pled guilty to the reduced charge of second-degree intentional homicide while using a dangerous weapon, in violation of WIS. STAT. §§ 940.05(1)(b) (2003-04) and 939.63 (amended Feb. 1, 2003), and the prosecutor recommended a substantial (but unspecified) term of confinement.<sup>2</sup> The trial court imposed a thirty-five-year sentence, comprised of twenty-five- and ten-year respective periods of confinement and extended supervision. Carrasquillo moved for postconviction plea withdrawal, which the trial court summarily denied.

¶3 In his motion for postconviction plea withdrawal, Carrasquillo contended that he did not understand that by pleading guilty, he was forfeiting his right to litigate self-defense.<sup>3</sup> Carrasquillo's postconviction counsel essentially

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<sup>1</sup> Carrasquillo's admissions were alleged in the criminal complaint, which he allowed the trial court to use for the factual basis for his guilty plea. The Honorable Michael B. Brennan conducted the guilty plea colloquy.

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

<sup>3</sup> Carrasquillo wrote to postconviction counsel explaining that he reviewed the statements of four alleged witnesses, whose various accounts of the shooting were inconsistent and demonstrated that they were lying. He also repeatedly asserted that he shot Puente in self-defense. Carrasquillo's correspondence is incorporated by reference to his postconviction motion.

concedes the apparent propriety of the guilty plea colloquy and signed guilty plea questionnaire and waiver of rights form; however, he argues that neither demonstrates that Carrasquillo actually understood that by pleading guilty he was forfeiting his right to litigate self-defense.

¶4 “To withdraw his plea after sentencing, [the defendant] need[s] to establish by clear and convincing evidence, that failure to allow a withdrawal would result in a manifest injustice.” *State v. Trochinski*, 2002 WI 56, ¶15, 253 Wis. 2d 38, 644 N.W.2d 891. “The motion is addressed to the sound discretion of the trial court and we will only reverse if the trial court has failed to properly exercise its discretion.” *State v. Krieger*, 163 Wis. 2d 241, 250, 471 N.W.2d 599 (Ct. App. 1991).

¶5 The plea questionnaire and the transcript of the plea hearing belie Carrasquillo’s contention and demonstrate the trial court’s compliance with WIS. STAT. § 971.08(1) and *State v. Bangert*, 131 Wis. 2d 246, 267-72, 389 N.W.2d 12 (1986). *See also State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987) (a completed plea questionnaire is competent evidence of a knowing, intelligent and voluntary plea). Carrasquillo filed a signed plea questionnaire and addendum, acknowledging that he understood their contents. In the addendum, he further acknowledged by his signature, “I understand that by pleading I am giving up defenses such as alibi, intoxication, self-defense, [and] insanity.” He also assured the trial court that he had reviewed the plea questionnaire with his counsel and understood that “[b]y signing [the questionnaire and addendum] and pleading guilty to this amended charge, [he was] giving up a series of constitutional rights which are listed on each form.”

¶6 During the guilty plea colloquy, trial counsel also explained to the trial court that he reviewed several jury instructions with Carrasquillo, including WIS JI—CRIMINAL 1017, regarding self-defense to a homicide. Before imposing sentence, the trial court acknowledged that Carrasquillo probably believed that the shooting was in self-defense, to which his trial counsel responded:

[Mr. Carrasquillo] understands that his act, even in this particular case, he went overboard at that particular point, Your Honor. When you describe that Mr. Puente was on the ground, Mr. Carrasquillo clearly understands that at that particular point there was no additional justification for his acts, and he has never discounted that or minimized that.

¶7 The plea questionnaire and guilty plea colloquy demonstrate that Carrasquillo claimed to understand that by pleading guilty he would forfeit his right to litigate self-defense. There is nothing in Carrasquillo's postconviction motion to indicate otherwise. The proper questions were asked; nothing indicates that Carrasquillo did not understand his admissions. In fact, he confessed to killing Puente. He wanted the police to know about his altercation with Puente; that mitigating circumstance prompted the reduced charge. *See* WIS. STAT. § 940.01(2)(b) (unnecessary defensive force as circumstance mitigating first- to second-degree intentional homicide). Trial counsel explained why the facts would not support a valid claim of self-defense. This potential defense was not overlooked; it was used to reduce the charge, but was rejected as a valid defense for trial purposes.

¶8 Carrasquillo has not clearly and convincingly shown that he is entitled to postconviction plea withdrawal for his belated claimed lack of understanding that by pleading guilty to the reduced charge, he was waiving his right to litigate self-defense. In fact, the record directly, consistently and repeatedly belies his claim.

*By the Court.*—Judgment and order affirmed.

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

