COURT OF APPEALS
DECISION
DATED AND FILED

June 13, 2006

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2005AP1632-CR **Cir. Ct. No. 2002CF6926**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH R. KING,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed*.

Before Fine, Curley and Kessler, JJ.

¶1 KESSLER, J. Joseph R. King appeals from a judgment of conviction and an order denying his post-conviction motion for relief. King, who moved to withdraw his guilty plea and no contest pleas both prior to and after sentencing, presents numerous arguments related to his desire to vacate his pleas

and go to trial. He also argues that he was denied the effective assistance of counsel on several occasions. Finally, he contends that the trial court erroneously denied his trial counsel's motion to withdraw. We reject his arguments and affirm the judgment and order.

BACKGROUND

¶2 King and his stepbrother, Daniel King (hereafter "Daniel"), were charged in connection with the brutal sexual assault and battery of two women, both of whom suffered serious physical injuries. Both defendants were scheduled to be tried together on eleven separate charges. Trial was scheduled for Monday, August 11, 2003. The Friday before the trial, King appeared before the trial court with his trial counsel, James Toran.[1]

¶3 Toran told the trial court that he and King had been in plea negotiations with the State, and that he and King were in conflict over certain strategies and decisions. Toran explained: "[B]ased upon our conversations and things that he's said to me in [the course of our] attorney/client relationship, I think that would pose a conflict with me putting him on the stand…. After this weekend, I wouldn't feel comfortable proceeding…."

¶4 After a lengthy discussion, the trial court denied Toran's motion to withdraw as counsel. The trial court explained that it did not want to delay the trial. It found that there had not been a breakdown of communication between King and Toran, and that the two "have no difficulty getting along." It was also

[1] Because King had three trial counsel and one postconviction counsel, we will identify them by name to avoid confusion.

noted that the real problem appeared to be a disagreement over trial strategy, and that this did not justify delaying the trial.

¶5 On Monday, the parties appeared before the trial court and announced that a plea agreement had been reached, although Daniel would still be going to trial that day. The State indicated that pursuant to the plea agreement, the State would file an Amended Information charging King with three crimes: two counts of second-degree sexual assault (one for each victim), and one count of substantial battery, all as party to a crime. All other charges would be dismissed. The State would recommend a prison sentence of unspecified length.

¶6 Toran agreed with the State's recitation, and also made a record with respect to King's change of heart since Friday:

> I just want to point out on Friday I had the case scheduled for potential projected guilty plea, and my client indicated at that time on the record that he wanted to discuss the matter with his mother, and it appears as though, Your Honor, my client was concerned because he was hearing things such as that the victims would not be present today, and that the cases would probably be dismissed because there [were] no victims….

Toran indicated that he was now aware that one of the victims would be testifying, and that the other victim had offered testimony at a preliminary hearing that would be used at trial.

¶7 The trial court questioned King about his decision to enter into the plea agreement, and about his knowledge of the direct consequences of his plea. The trial court then continued with a standard plea colloquy. King pled no contest to the sexual assault charges and guilty to the aggravated assault charge. The trial court asked Toran if he was satisfied that King was entering his pleas freely, voluntarily and intelligently, to which Toran replied: "Yes, Your Honor, and

given the amount of review and study and conversation with the family members, Your Honor, I think that he probably has enough information to be a defense attorney."

¶8 The trial court accepted the facts in the criminal complaint as a factual basis for the plea and went through each element of the crimes with King. The trial court specifically made findings with respect to the voluntariness of the pleas:

> We are on the date of trial. That can bring a sense of urgency to negotiations and/or the State's state of mind or the defendant's state of mind. Here, I think it was a case of Mr. Toran continuing to spend time with Mr. King. Ultimately, Mr. King has entered the pleas that he has. The Court is convinced that he's doing so freely, voluntarily, intelligently and knowingly. He looks me in the eye. He responds to my questions directly. He consults with Mr. Toran when applicable. He and Mr. Toran are getting along quite well. Mr. Toran spent some time with Mr. King in the bullpen this morning. So given [the] … totality of the circumstances, the Court will accept these pleas.

A presentence investigation report was ordered and the matter was set for sentencing on September 16, 2003.

¶9 Meanwhile, Daniel proceeded to trial on all eleven counts. On August 14, 2003, he was found not guilty of eight counts, and guilty of two counts of substantial battery intending bodily harm and one count of armed robbery with threat of force.[2]

[2] Daniel was ultimately sentenced to a total of thirty-four years of initial confinement and twenty years of extended supervision. The trial court later granted Daniel's postconviction motion for a new trial on one of the substantial battery convictions on grounds that Daniel's confrontation rights were violated in connection with that charge. ***State v. King***, 2005 WI App 224, ¶2, ___ Wis. 2d ___, 706 N.W.2d 181. This reduced Daniel's sentence to thirty years of (continued)

¶10 On September 16, 2003, King moved to withdraw his guilty plea and no contest pleas.[3] He offered three reasons, alleging: (1) he was pressured by family members to enter his pleas; (2) he was pressured by his trial counsel to plead guilty; and (3) the pleas were entered into in an environment of haste and confusion.

¶11 The State opposed the motion. It argued that the record refuted King's claims. Citing ***State v. Shanks***, 152 Wis. 2d 284, 290, 448 N.W.2d 264 (Ct. App. 1989), the State argued that because King waited five weeks to file his motion, there was no evidence of the "'swift change of heart'" that can indicate that a plea is entered in haste and confusion. *See* ***id.*** (citation omitted).

¶12 On October 31, 2003, the trial court held a hearing on King's motion to withdraw his pleas. In support of his motion, King offered testimony, in response to questioning from trial counsel Toran, concerning his desire to withdraw his pleas. He testified that the reason he had initially rejected plea offers was because he did not commit the sexual assaults. He said he knew that his semen was not found on the two victims, and that at the time of the alleged assaults, he was so intoxicated that he was unable to perform sexually. King said that when he discussed pleading guilty with Toran, he felt pressured to plead no contest to those crimes. He stated:

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initial confinement and fifteen years of extended supervision. We affirmed his conviction and sentence. ***Id.***, ¶1.

[3] In this case, King entered one guilty plea and two no contest pleas. As relevant here, King's no contest pleas are the equivalent of a guilty plea. *See* ***County of Racine v. Smith***, 122 Wis. 2d 431, 434, 362 N.W.2d 439 (Ct. App. 1984). For brevity, in this opinion we will generally refer to arguments related to withdrawal of guilty pleas, as opposed to guilty and no contest pleas, but we intend our discussion to apply to both.

> [S]peaking to you [Toran] about the matter, your whole thing was kind of like take the plea, you know; and the only reason I did take the plea, you know, because the fact [sic] you said … you was going to quit, and that's the whole thing you told me if I didn't take the plea you was going to quit.

¶13 On cross-examination, King acknowledged that he knew he could have gone to trial, but contended that he believed Toran "was going to quit" if he did not take the plea bargain, which would have meant he would be unrepresented at trial. However, he admitted that he was in court when Toran assured the court on Friday, August 8, 2003, that Toran would be prepared to go to trial on the following Monday, and that Toran was in court, prepared to go to trial, when King entered his pleas.

¶14 No other testimony or affidavits were offered. In closing argument, Toran said that King had always maintained his innocence of the sexual assaults. Toran also addressed his own involvement in convincing King to accept the plea:

> I wouldn't say … I coerced him or twisted his arm in any respect; but at one point in time on the record I became frustrated … because I was not able to get a plea bargain or … an agreement which would be conducive [sic] to both parties.
>
> The State was unwilling to dismiss certain counts, and he was unwilling to plead guilty to certain counts because he maintained his innocence.
>
> Now, I'm looking at a young man … and I see so many young men … who have gone to trial on cases of this magnitude with the number of counts and the amount of exposure who have literally been convicted and never ever walked the street again.
>
> And that was my biggest concern, and my biggest frustration is to see that that happened to a person with no record due to his involvement and participation or lack of participation in some events which were criminal.

> So from that standpoint, Your Honor, I … spoke to his mother … in-depth. I met with her at her home…. I discussed it with her and her brother….

Toran then seemed to acknowledge that he might have pressured King to accept the plea, recognizing that someone without a prior record, like King, might feel pressure "when they hear the attorneys say, well, I don't want to see you throw your life away, I'd rather withdraw th[a]n to see you go to trial…."

¶15 Toran also explained that it took some time to file the plea withdrawal motion after ordering the plea transcript, implying that this delay should not be held against King.

¶16 The State argued that King had submitted no "fair and just" reason to withdraw his plea, because he was basically arguing that he changed his mind about his pleas. The State noted that King provided no testimony about feeling pressure from his family to plead guilty. Finally, the State recognized that Daniel had fared well at trial, and stated its belief that "King is hoping that he would get a similar type of verdict."

¶17 The trial court acknowledged that presentence motions for plea withdrawal must be liberally granted, but noted that a "defendant is required to show an adequate reason for a change of heart other than a desire to have a trial." The trial court indicated that it had reviewed the plea hearing transcript, and found that the transcript refuted many of King's assertions. The trial court rejected King's assertions that he had been unduly pressured by his family, that he was confused, or that his plea was entered hastily.

¶18 It also found that trial counsel had not coerced King into pleading guilty. The trial court said: "The only conceivable argument I think that the

defendant has is trial attorney coercion. To be frank, I can't think of a more genial or less coercive fellow than Mr. Toran." The trial court also found King's proffered reason for plea withdrawal "incredible." The trial court stated:

> The real reason, in the Court's judgment, after having seen Mr. Joseph King testify this morning, understanding the sequence of the events, the sequence of when this motion was filed, the nature of the reasons proffered, the real reason is that the codefendant, Daniel King, was later acquitted of a majority of the charges against that codefendant, including two of the three charges that the defendant has pled no contest to in this case.

¶19 The trial court found that King had failed to show by a preponderance of the evidence a fair and just reason for plea withdrawal. It denied King's motion and set sentencing for December 10, 2003.

¶20 On December 1, 2003, Toran moved to withdraw as trial counsel, citing irreconcilable differences and a lack of communication and trust between him and King. King favored the motion. The trial court held a hearing and permitted Toran, who had been privately retained, to withdraw.

¶21 Attorney Thomas Harris was appointed to represent King. Harris filed, on King's behalf, another motion to withdraw King's pleas (which was essentially a motion for reconsideration), repeating King's assertion that he was coerced to plead guilty by Toran, and asserting for the first time that his pleas were entered without knowledge of the charge or the sentence that would be imposed. No affidavits were provided in support of the motion.

¶22 At a subsequent hearing on the motion, Harris said he needed to review the transcript of the hearing on King's first motion to withdraw, and that he might want to ultimately call Toran as a witness. The trial court agreed to allow Harris time to review the transcripts and scheduled another hearing.

¶23 Harris reviewed the transcripts and contacted Toran about testifying. However, he indicated at a March 17, 2004 status conference that he felt he had to move to withdraw as counsel. He said that King had been aggressive and confrontational with him, and that King had made it clear he did not want Harris to represent him. Ultimately, on July 13, 2004, after a series of rescheduled hearings, the trial court granted Harris's motion to withdraw, which King supported.

¶24 Attorney Patrick T. Earle was appointed to represent King. Earle filed a brief on King's behalf in support of King's previously filed motion to withdraw his pleas. The brief asserted that King should be allowed to withdraw his pleas because he entered them believing that Toran would not aggressively defend him. No affidavits were filed in support of the brief.

¶25 On October 13, 2004, the trial court heard argument on the motion to reconsider its earlier denial of King's motion to withdraw his pleas. No testimony was offered. Relying on its assessment of King's credibility at the October 2003 hearing, as well as the transcripts, the trial court rejected King's assertions that he had entered his plea hastily, that King was confused about his pleas, and that his trial counsel coerced him into pleading guilty. The trial court denied King's motion.

¶26 King was sentenced on October 27, 2004. He received three consecutive sentences totaling eighteen years of initial confinement and fifteen years of extended supervision, allocated as: (1) six years' initial confinement and five years' extended supervision (second-degree sexual assault, party to a crime); (2) seven years' initial confinement and five years' extended supervision (second-degree sexual assault, party to a crime); and (3) five years' initial confinement and five years' extended supervision (substantial battery, party to a crime).

¶27 Attorney Stephanie Rapkin was appointed to represent King as postconviction/appellate counsel. She filed on King's behalf a motion to withdraw his pleas, post-sentencing, on grounds that: (1) King should have been allowed to withdraw his pleas prior to sentencing because Toran coerced him into pleading guilty; (2) Toran failed to provide King with adequate counsel by not arranging to provide Toran's own sworn testimony at King's plea withdrawal hearing; (3) Toran failed to advise King prior to the pleas that he might be subject to a WIS. STAT. ch. 980 proceeding in the future, and successor counsel failed to raise this issue as a basis to withdraw the pleas; (4) Earle failed to call Toran to testify at the hearing on the motion to reconsider; (5) the trial court erroneously denied Toran's pre-plea motion to withdraw as counsel; and (6) the trial court failed to inform King that he might be subject to a ch. 980 commitment.

¶28 In support of this motion King filed an affidavit from Toran in which Toran provided information about his pre-plea motion to withdraw as trial counsel. Toran's affidavit also stated:

> That upon discussion with my client I indicated to him in no uncertain terms, that I would be unable to proceed with the trial and the defense that he requested and that his only option was to enter a no contest/guilty plea pursuant to negotiations with the state. I persuaded him to do so by not only heated discussion, but also by informing him that I couldn't continue to represent him at trial.

The trial court denied the motion without a hearing, in a written decision. This appeal followed.

DISCUSSION

¶29 On appeal, King presents many of the same arguments that he offered in his postconviction motion. We examine each in turn.

I. Arguments related to notifications regarding WIS. STAT. ch. 980

¶30 King presents several arguments with respect to WIS. STAT. ch. 980. He argues that his trial counsel failed to advise him, prior to pleading guilty, that he could be subject to a ch. 980 petition. He argues that Harris and Earle should have also told him about the consequences of a ch. 980 petition so that he could have used that as a basis to withdraw his guilty pleas prior to sentencing. Finally, King contends that the trial court should have allowed him to withdraw his pleas after sentencing, after he found he was subject to a ch. 980 commitment, because he was not fully informed of the ramifications of his plea. We reject his arguments.[4]

¶31 The potential for commitment under WIS. STAT. ch. 980 is a collateral, rather than direct, consequence of a plea. ***State v. Myers***, 199 Wis. 2d 391, 394-95, 544 N.W.2d 609 (Ct. App. 1996). "Although trial courts must inform defendants of the direct consequences of their pleas, trial courts have no obligation to inform defendants of their convictions' collateral consequences." ***Id.*** at 394. It follows that "[l]ack of knowledge of the collateral consequences of a guilty plea does not affect the plea's voluntariness because knowledge of these consequences is not a prerequisite to entering a knowing and intelligent plea." ***State v. Santos***, 136 Wis. 2d 528, 532-33, 401 N.W.2d 856 (Ct. App. 1987).

¶32 Trial counsel, like trial courts, are not required to inform defendants about the many potential collateral consequences of a guilty plea. Thus, we have

[4] Curiously, King offers no affidavit explicitly indicating that had he known prior to pleading guilty that he may be subject to a WIS. STAT. ch. 980 petition in the future, he would not have pled guilty. Even if such an affidavit had been provided, we would nonetheless reject King's arguments for the reasons stated.

held that a trial counsel's failure to advise a defendant of collateral consequences is not a sufficient basis for an ineffective assistance of counsel claim. ***Id.*** at 533.

¶33 Although a defendant's ignorance of the collateral consequences of a plea does not affect the plea's voluntariness, *see* ***id.*** at 532-33, we have recognized that it may constitute a "fair and just reason" to withdraw one's guilty plea *prior* to sentencing, *see* ***State v. Bollig***, 2000 WI 6, ¶31, 232 Wis. 2d 561, 605 N.W.2d 199. However, *after* sentencing, when the defendant must "establish by clear and convincing evidence, that failure to allow a withdrawal would result in a manifest injustice," *see* ***State v. Trochinski***, 2002 WI 56, ¶15, 253 Wis. 2d 38, 644 N.W.2d 891 (also holding that a manifest injustice exists if a guilty plea is not knowing and voluntary), ignorance of the collateral consequences of a plea is insufficient to allow resentencing, *see* ***Myers***, 199 Wis. 2d at 395 (affirming trial court's denial of defendant's post-sentencing motion to withdraw his guilty plea, because defendant "needed no knowledge of the potential for a future chapter 980 commitment in order to make his plea knowing and voluntary").

¶34 Applying these standards here, we must reject King's argument that he is entitled to withdraw his plea post-sentencing because his plea was not knowing and voluntary. *See* ***Trochinski***, 253 Wis. 2d 38, ¶15; ***Myers***, 199 Wis. 2d at 394-95. We also reject his claim that he was denied the effective assistance of trial counsel when they did not inform him that he could be subject to a WIS. STAT. ch. 980 petition. *See* ***Santos***, 136 Wis. 2d at 533.

II. Arguments related to other "fair and just" reasons for plea withdrawal

¶35 King argues that the trial court erroneously exercised its discretion when it denied his presentence motion to withdraw his pleas. He maintains that he

was coerced by his trial counsel, and that this was a "fair and just reason" to withdraw his pleas.[5] He disagrees with the trial court's interpretation of the facts, arguing that "[t]he record clearly indicates a high level of frustration on the part of Attorney James Toran. He didn't want to represent his client at trial; he wanted to withdraw as counsel, and he wanted his client to enter a guilty plea immediately. Those are the objective facts."

¶36 A motion to withdraw a plea prior to sentencing "should be freely allowed if the defendant presents a 'fair and just reason' to justify the withdrawal." ***State v. Timblin***, 2002 WI App 304, ¶19, 259 Wis. 2d 299, 657 N.W.2d 89 (citation omitted). "[F]reely does not mean automatically. A fair and just reason is some adequate reason for defendant's change of heart other than the desire to have a trial." ***Id.*** (citation, internal quotation marks and ellipsis omitted). "The defendant bears the burden of proving a fair and just reason by a preponderance of the evidence." ***State v. Leitner***, 2001 WI App 172, ¶26, 247 Wis. 2d 195, 633 N.W.2d 207.

¶37 "Whether a defendant's reason adequately explains his or her change of heart is up to the discretion of the [trial] court." ***State v. Kivioja***, 225 Wis. 2d 271, 284, 592 N.W.2d 220 (1999). We do not upset discretionary determinations unless discretion was erroneously exercised. ***Id.*** We uphold discretionary determinations if the trial court reached a reasonable conclusion based on the proper legal standards and a logical interpretation of the facts. ***Id.*** If the trial court finds the defendant's proffered reason is incredible, it may deny the motion.

[5] On appeal, King does not argue that he was pressured by family members or that his pleas were entered into in an environment of haste and confusion—arguments he made at the trial court level. We will therefore consider only his argument with respect to trial counsel coercion.

Leitner, 247 Wis. 2d 195, ¶26. However, if the defendant makes the necessary showing, withdrawal should be permitted unless the State "has been substantially prejudiced by reliance upon the defendant's plea." ***Shanks***, 152 Wis. 2d at 288-89 (footnote omitted).

¶38 Applying these standards to the trial court's discretionary determination, we reject King's challenge to the trial court's decision. The trial court made detailed findings on the day of the plea and at the plea withdrawal motion hearing concerning the role trial counsel played in the plea bargaining process. The trial court found that Toran had not placed undue pressure on King, and that King's proffered reason for plea withdrawal was "incredible." The trial court further found that King's change of heart was his desire to have a trial, inspired by Daniel's receipt of not guilty verdicts for eight counts, and that this was not a "fair and just" reason to allow King to withdraw his pleas. *See* ***Timblin***, 259 Wis. 2d 299, ¶19. The trial court's findings are not clearly erroneous, and represent a logical interpretation of the facts, made by one who has had the benefit of observing the defendant first-hand at both the plea hearing and the plea withdrawal hearing. *See* ***Kivioja***, 225 Wis. 2d at 284. We discern no basis to overturn the trial court's findings and exercise of discretion.

III. Whether Toran provided ineffective assistance when he continued as King's counsel

¶39 King argues that he was denied the effective assistance of trial counsel when Toran "was forced to prepare and argue the motion for withdrawal of the plea when the allegation was coercion" and when Toran "was forced to remain as [King's] counsel." King also suggests that there was a conflict of interest because Toran could not effectively advocate for plea withdrawal based upon alleged coercion by Toran himself. We infer King's argument to be that

Toran should have moved to withdraw as King's attorney prior to the plea withdrawal hearing, so that subsequent counsel could have called Toran as a witness.

¶40 To sustain a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that counsel's errors were prejudicial. ***Strickland v. Washington***, 466 U.S. 668, 687 (1984); ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). Whether counsel's actions constitute ineffective assistance is a mixed question of law and fact. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). The trial court's determination of what counsel did, or did not do, and the basis for the challenged conduct, are factual and will be upheld unless they are clearly erroneous. ***Id.*** at 634. The ultimate conclusion, however, of whether the conduct resulted in a violation of the defendant's right to effective assistance of counsel is a question of law we review *de novo*. ***State v. Harvey***, 139 Wis. 2d 353, 376, 407 N.W.2d 235 (1987). In analyzing an ineffective assistance claim, this court may choose to address either the deficient performance prong or the prejudice prong first. ***Strickland***, 466 U.S. at 697. If we determine that the defendant has made an inadequate showing on either component, we need not address the other. ***Id.***

¶41 We conclude that King has failed to satisfy the prejudice prong and, therefore, reject his ineffective assistance of counsel claim. King does not explain what testimony would have been presented to the trial court if different trial counsel had represented King at the first plea withdrawal hearing. Moreover, King had two subsequent trial counsel who advocated for his presentence plea withdrawal. They could have elicited live testimony or affidavits from King or

Toran, and they did not.[6] No facts have been brought to light that show the result of the plea withdrawal hearing would have been different. Thus, we are unconvinced that King was prejudiced by Toran's representation of him at the first plea withdrawal hearing. We reject this ineffective assistance of counsel claim.

IV. Whether successor trial counsel provided ineffective assistance

¶42 King contends that successor trial counsels provided ineffective assistance when they failed to secure Toran's testimony at the hearing on the motion to reconsider King's motion for plea withdrawal.[7] King asserts that Toran's postconviction affidavit "provides additional support to the belief a full hearing should have been conducted to fully assess the interaction between Mr. Toran and his client." The trial court rejected this argument on grounds that King's postconviction motion failed to make a sufficient showing that the results of the second motion hearing would have been different if Toran had testified. We agree with the trial court.

¶43 In its written order denying King's postconviction motion, the trial court recognized that the "affidavit states the same factual scenario Mr. Toran set forth on the record previously." We agree that the affidavit from Toran is consistent with his representations to the trial court prior to the plea hearing and at the plea withdrawal hearing, upon which the trial court based its factual findings.

[6] In fairness to King, we note that he complains about the fact that Toran was not called as a witness by successor trial counsel. We address this *infra*.

[7] At times King styles this argument as failing to subpoena Toran, while at other times he complains about the "failure to address and present such information to the court." Because it is ultimately the lack of testimony, rather than simply the subpoena, that is most damaging, we will refer to the lack of testimony from Toran.

Toran's affidavit states that he and King had "shouting matches and threats." It also states that Toran persuaded King to plead guilty "by not only heated discussion, but also by informing him that I couldn't continue to represent him at trial." Toran told the trial court about his strained relationship with King the Friday before trial, when he sought to withdraw. Toran said he believed he could not represent King. The trial court considered the motion to withdraw and rejected it.

¶44 The following Monday, when King entered his plea, the parties acknowledged the prior issues between Toran and King. Toran made a point of talking about King's decision to enter pleas, and the trial court explicitly noted Toran and King were getting along well, and that there was no indication that King's pleas were anything but voluntary. In addition, King admitted on cross-examination that he was in court when Toran assured the trial court on Friday, August 8, 2003, that Toran would be prepared to go to trial on the following Monday, and that Toran was in court, prepared to go to trial, when King entered his pleas.

¶45 At the plea withdrawal hearing, while serving as an officer of the court, Toran described his interaction with King. He explicitly said he had not coerced King, but acknowledged that he had been frustrated with King's unwillingness to accept the plea. The trial court was aware of this when it rejected King's assertion that he felt coerced to plead guilty. The trial court based its decision on its disbelief of King's testimony, the fact that King had not immediately sought to withdraw his pleas, and its conclusion that King's motion to withdraw his pleas was motivated by his desire to have a trial once Daniel was successfully acquitted on eight charges.

¶46 Toran's affidavit does not provide new information that was previously unknown to the trial court when it found that King's asserted reason for plea withdrawal was "incredible." We agree with the trial court that King has not shown that the results of the second plea withdrawal hearing would have been different if Toran had testified. Therefore, King has not shown he was prejudiced by his trial counsels' failure to secure Toran's testimony.

V. Whether Toran should have been permitted to withdraw prior to the plea

¶47 King argues that the trial court erroneously exercised its discretion when it denied Toran's motion to withdraw prior to the entry of King's plea. "The general rule is that a guilty or no contest plea waives all nonjurisdictional defects and defenses, including alleged constitutional violations occurring prior to the plea." ***State v. Lasky***, 2002 WI App 126, ¶11, 254 Wis. 2d 789, 646 N.W.2d 53. We are aware of no authority holding that appeal of a trial court's order denying a trial counsel's motion to withdraw entered prior to the plea is a recognized exception to the guilty-plea-waiver rule, and we are not convinced that we should review a pre-plea order denying trial counsel's motion to withdraw. Therefore, we decline to review the trial court's August 11, 2003 decision to deny Toran's motion to withdraw as trial counsel.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.