

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 20, 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. 2004AP786-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2001CF1342

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TYREES O. MURRAY,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Dane County: STUART A. SCHWARTZ, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Deininger, JJ.

¶1 PER CURIAM. Tyrees Murray appeals a judgment convicting him of first-degree intentional homicide and kidnapping. He also appeals orders

denying his postconviction motions.¹ Murray argues that the circuit court should have allowed him to withdraw his guilty plea prior to sentencing. We affirm.

¶2 A motion to withdraw a guilty plea prior to sentencing should be granted if the defendant presents a fair and just reason to justify the withdrawal. *State v. Garcia*, 192 Wis. 2d 845, 861, 532 N.W.2d 111 (1995). “A fair and just reason is ‘some adequate reason for defendant’s change of heart ... other than the desire to have a trial.’” *Id.* at 861-62 (citation omitted). For example, a fair and just reason for withdrawing a plea exists if there is a “genuine misunderstanding of the plea’s consequences; haste and confusion in entering the plea; and coercion on the part of trial counsel.” *State v. Shimek*, 230 Wis. 2d 730, 739, 601 N.W.2d 865 (Ct. App. 1999). “Whether a defendant’s reason adequately explains his or her change of heart is up to the discretion of the circuit court.” *State v. Kivioja*, 225 Wis. 2d 271, 284, 592 N.W.2d 220 (1999). “A circuit court’s decision with respect to this discretionary ruling will not be upset on review unless it was erroneously exercised.” *Id.*

¶3 Murray contends that he misunderstood the consequences of his plea because he thought that the parole eligibility date agreed on pursuant to the plea agreement was his mandatory release date. This is a factual issue that was resolved against Murray following an evidentiary proceeding at which Murray and his trial counsel testified. Murray’s trial counsel, Attorney Daniel Dunn, testified at the hearing on the motion to withdraw the plea that he had several discussions

¹ The notice of appeal states that Murray appeals the judgment of conviction entered October 10, 2002, and the order denying his postconviction motion entered March 4, 2004. While the appeal was pending, we remanded for Murray to file an additional postconviction motion in the circuit court, which was denied on June 6, 2005. That order is also before us.

with Murray about the meaning of the sentence and parole eligibility and that Murray told Dunn that Murray was not worried about getting released on his parole eligibility date because he had changed his life, would do well in prison and, therefore, he would be released at the first opportunity. Murray's statement to Dunn that he was not worried about getting released on his parole eligibility date directly contradicts Murray's claim that he thought the parole eligibility date was in fact a mandatory release date. The circuit court found that counsel's testimony was credible and Murray's testimony that he did not understand was not credible. Because trial counsel's testimony supports the circuit court's conclusion that, at the time Murray entered the plea, he understood what it meant, and because Murray has not demonstrated that the factual findings supporting this conclusion are clearly erroneous, we affirm the circuit court.

By the Court.—Judgment and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5. (2003-04).