

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 2007

David R. Schanker
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. 2007AP197-CR

Cir. Ct. No. 2004CF157

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHAD K. REUTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Dykman, Higginbotham and Bridge, JJ.

¶1 PER CURIAM. Chad Reuter appeals a judgment convicting him of first-degree recklessly endangering safety, disorderly conduct, and possessing drug paraphernalia. The court entered judgment after Reuter pled no contest to the

charges. The issue is whether the trial court erroneously exercised its discretion by denying Reuter's presentence motion to withdraw his plea. We affirm.

¶2 The State commenced this action in October 2004. Reuter's mental status was an ongoing issue during the prosecution, both in the context of his competency and his initial NGI plea. A psychologist evaluated Reuter and filed a report finding him competent to proceed in March 2005. Reuter was subsequently found competent to proceed. He entered his plea on August 25, 2005.

¶3 In October 2005, Reuter's attorney again raised the competency issue, and, on October 24, 2005, after a second competency evaluation, the court found him not competent to proceed. Institutionalization and medication restored Reuter's competency. Before sentencing he moved to withdraw his plea, alleging that his mental state on August 25, 2005, precluded him from understanding the consequences of his pleas. The trial court concluded that Reuter had not established that he was incompetent when he entered his pleas, and denied his motion. On appeal Reuter contends that the court unreasonably concluded from the evidence that he was competent when he entered his pleas.

¶4 The trial court should freely grant a presentence motion to withdraw a plea 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. However, freely does not mean automatically; a fair and just reason is an "adequate reason for defendant's change of heart other than the desire to have a trial." *Id.* (citation omitted). The defendant must show 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. The trial court exercises its discretion in determining whether the defendant meets this burden. *See State v. Kivioja*, 225

Wis. 2d 271, 284, 592 N.W.2d 220 (1999). 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.*

¶5 Reuter was undisputedly incompetent two months after entering his plea. However, he offered no medical reports or testimony that he was incompetent two months earlier. He did not offer into evidence a transcript of the plea hearing, or testimony from witnesses to it, and therefore could not refute the trial court's recollection that his responses and conduct at the plea hearing would not support his incompetency claim. The trial attorney who represented him at the plea hearing twice raised competency issues during the proceeding, both before and after the plea hearing, but not at the plea hearing. From this the trial court reasonably inferred that Reuter was not exhibiting the same signs of mental confusion when he pled as he exhibited to counsel at other times in the proceeding. Reuter challenges the court's inference but offered no evidence, such as counsel's testimony, to refute it. Consequently, the trial court reasonably concluded that Reuter did not meet his burden to show incompetency at the time of his plea.

By the Court.—Judgment affirmed.

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

