

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 14, 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. 2006AP1645

Cir. Ct. No. 1992CF923377

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALIL AZIZI,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. WAGNER, Judge. *Affirmed.*

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

¶1 PER CURIAM. Alil Azizi appeals from an order denying his motion for plea withdrawal predicated on *State v. Douangmala*, 2002 WI 62, 253 Wis. 2d 173, 646 N.W.2d 1. The issue is whether failure to apply *Douangmala* to Azizi's 2006 plea withdrawal motion deprives him of due process and equal

protection of the law. We conclude that it does not, and that this appeal is controlled by *State v. Lagundoye*, 2004 WI 4, ¶44, 268 Wis. 2d 77, 674 N.W.2d 526. Therefore, we affirm.

¶2 In 1993, Azizi entered *Alford* pleas to three counts of sexual assault of a child.¹ The trial court imposed an aggregate thirty-year sentence, comprised of three consecutive ten-year sentences. Azizi, a Yugoslavian citizen, moved to withdraw his pleas because he claimed to have been unaware that, as a consequence of his *Alford* pleas, he could be deported. The trial court denied the motion. On appeal, we concluded that the trial court failed to advise Azizi of the potential risk of deportation as a result of his *Alford* pleas; we then remanded this matter for an evidentiary hearing to determine whether Azizi did in fact know that his *Alford* pleas subjected him to the risk of deportation. See *State v. Azizi*, No. 94-1636-CR, unpublished slip op. (Wis. Ct. App. Dec. 23, 1994). Following the evidentiary hearing, the trial court found that Azizi was aware that his *Alford* pleas subjected him to that risk. On appeal we affirmed, concluding that “[t]here [wa]s ample evidence in the record to support the trial court’s finding that Azizi was aware of the potential for deportation as a result of his *Alford* pleas.” *State v. Azizi*, No. 95-1191-CR, unpublished slip op. at 2 (Wis. Ct. App. Feb. 13, 1996).

¶3 In 2002, the Wisconsin Supreme Court held that a defendant is entitled to plea withdrawal if the trial court fails to advise the defendant, prior to entering his or her plea, that a guilty or no-contest plea could subject that

¹ An *Alford* plea waives a trial and constitutes consent to the imposition of sentence, despite the defendant’s claim of innocence. See *North Carolina v. Alford*, 400 U.S. 25, 37-38 (1970); accord *State v. Garcia*, 192 Wis. 2d 845, 856, 532 N.W.2d 111 (1995) (acceptance of an *Alford* plea is discretionary in Wisconsin).

defendant to deportation (and the defendant can show that his or her plea is likely to result in deportation), regardless of whether that defendant was actually aware of those consequences. *See Douangmala*, 253 Wis. 2d 173, ¶¶3-4. In 2003, this court held that *Douangmala* did not apply retroactively. *See State v. Lagundoye*, 2003 WI App 63, ¶10, 260 Wis. 2d 805, 659 N.W.2d 501, *aff'd*, 268 Wis. 2d 77, ¶44. The following year, the Wisconsin Supreme Court affirmed. *See id.*, 268 Wis. 2d 77, ¶44.

¶4 In 2006, Azizi filed a postconviction motion, claiming that he was entitled to plea withdrawal pursuant to *Douangmala*. The trial court disagreed, ruling that *Lagundoye* controlled and that *Douangmala* did not apply retroactively. *See Lagundoye*, 260 Wis. 2d 805, ¶10, *aff'd*, 268 Wis. 2d 77, ¶44. Azizi appeals.

¶5 On appeal, Azizi contends that the trial court's ruling deprives him of due process and equal protection. *Lagundoye* controls Azizi's case. *See id.*, 268 Wis. 2d 77, ¶44. Azizi also urges us to apply *Douangmala*, and to overrule *Lagundoye*. "We are bound by decisions of the supreme court." *Ottinger v. Pinel*, 215 Wis. 2d 266, 278, 572 N.W.2d 519 (Ct. App. 1997), *abrogated on other grounds by Bicknese v. Sutula*, 2003 WI 31, 260 Wis. 2d 713, 660 N.W.2d 289. Consequently, any challenge Azizi has to *Lagundoye* must be pursued in and presented to the Wisconsin Supreme Court.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2005-06).

