

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 8, 2008

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. 2007AP2624

Cir. Ct. No. 2005CF3324

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUAN JOSE DEJESUS-TORRES,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JOSEPH R. WALL and KEVIN E. MARTENS, Judges.¹ *Affirmed.*

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

¹ The Honorable Joseph R. Wall entered the judgment of conviction. The Honorable Kevin E. Martens considered DeJesus-Torres' postconviction motion and request for reconsideration.

¶1 PER CURIAM. Juan Jose DeJesus-Torres pled guilty to and was convicted of possession of marijuana with intent to distribute, as a party to a crime. He appeals *pro se* from circuit court orders denying his WIS. STAT. § 974.06 (2005–06)² postconviction motion and his reconsideration motion. In the § 974.06 motion, DeJesus-Torres argued that his plea was invalid because his lawyer had failed to explain the elements to him, that he had not understood the elements of the crime to which he was pleading, and that he therefore had not entered a knowing, intelligent, and voluntary plea. The circuit court denied the motion largely because DeJesus-Torres had failed to ensure that a transcript of the plea hearing had been produced and included in the record. In deciding the reconsideration motion, the circuit court ordered the plea-hearing transcript, reviewed it, and concluded that the transcript showed that DeJesus-Torres had knowingly, intelligently, and voluntarily entered his plea. On appeal, we conclude that the record demonstrates that DeJesus-Torres’ claims are without merit. We therefore affirm the circuit court’s orders.

¶2 Milwaukee police were dispatched to a residence to investigate the report of a possible break-in. When they arrived, they found DeJesus-Torres and two other men attempting to exit the building through a broken window. In the building, police found drug paraphernalia and seven large boxes containing 340 pounds of marijuana. According to DeJesus-Torres, he went to the location with the other men to move the boxes of marijuana. When they discovered they did not have a key, they broke into the building. Police arrived shortly thereafter, and the men were arrested.

² All references to the Wisconsin Statutes are to the 2005–06 version unless otherwise noted.

¶3 DeJesus-Torres was charged with possessing marijuana with intent to distribute, as a party to a crime. He agreed to plead guilty in exchange for a favorable sentencing recommendation from the State. At the plea hearing, defense counsel noted that he had met with his client and an interpreter the night before the hearing and “spent a significant period of time reviewing all elements of the offense.” Defense counsel also submitted a guilty-plea questionnaire and waiver-of-rights form signed by DeJesus-Torres. By that questionnaire, DeJesus-Torres stated that he understood the elements of the crime and that the elements of the crime had been explained to him. The elements of the crime were also written on the questionnaire.

¶4 The circuit court engaged DeJesus-Torres in a plea colloquy through an interpreter. DeJesus-Torres stated that he could neither read nor write English. The circuit court then questioned DeJesus-Torres regarding his understanding of the crime. When questioned, DeJesus-Torres affirmed that he understood the elements of the crime that had been stated by the circuit court. Defense counsel then reiterated that he had reviewed the elements of the crime with his client and that he believed his client understood them. The circuit court then asked DeJesus-Torres:

The Court: Did you agree to help another person move some boxes of marijuana out of a house?

Interpreter: Yes, sir.

The Court: And you knew there was marijuana in the boxes?

Interpreter: Yes, sir.

The Court: How many boxes did you move from the house containing marijuana?

Interpreter: I grabbed one, but there were three boxes.

The Court: And you knew that another person was going to give or sell that marijuana to somebody else?

Interpreter: I did not know if the drugs were going to be sold. I just agreed to help them move it.

The Court: Well, did you know that they would be given to somebody else?

Interpreter: He said he will move it to another house.

The Court: Did you think one person was going to smoke all this marijuana, or did you think other people were going to?

Interpreter: It will be several people.

The Court: So, it would have to be given or sold to other people, right?

Interpreter: Yes.

The Court: And you figured that out when you were helping to move the boxes.

Interpreter: Yes.

¶5 In the postconviction motion that is the subject of this appeal, DeJesus-Torres argued that he pled guilty only because his attorney instructed him to do so. He stated that he had never “intended to deliver the drugs in question,” and that the “intent” element of the crime was therefore unproven and, in fact, absent. He argued that the only charge that would fit his behavior was burglary. Essentially, DeJesus-Torres is seeking to withdraw his plea.

¶6 Plea withdrawal after sentencing requires the defendant to demonstrate that a manifest injustice occurred. *State v. Washington*, 176 Wis. 2d 205, 213, 500 N.W.2d 331, 335 (Ct. App. 1993). Although denial of effective assistance of counsel is a manifest injustice if it occurs, the circuit court has discretion to deny a claim of ineffective assistance by counsel without a hearing if

the record conclusively demonstrates the defendant is not entitled to relief. *State v. Bentley*, 201 Wis. 2d 303, 309–310, 548 N.W.2d 50, 53 (1996).

¶7 The record is clear that DeJesus-Torres pled guilty to the marijuana charge knowingly, intelligently, and voluntarily. As we noted above, although DeJesus-Torres spoke and read little English, he was assisted by an interpreter during his conversations with counsel and at court proceedings. Defense counsel indicated at the plea hearing and in the plea questionnaire that he had explained the elements of the crime to DeJesus-Torres, and DeJesus-Torres agreed. When there was confusion regarding party-to-a-crime liability and whether DeJesus-Torres could fairly be said to have had the requisite intent to distribute the marijuana, the circuit court broke the colloquy into its component parts to ensure that DeJesus-Torres understood the meaning and consequences of the plea he was entering. The record demonstrates that the circuit court explained the meaning of the charge and DeJesus-Torres repeatedly indicated that he understood. Finally, we note that the information presented in the plea colloquy supported the charge. DeJesus-Torres has established neither deficient performance by counsel, nor prejudice arising from that allegedly deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to succeed on a claim of ineffective assistance by counsel, defendant must demonstrate both deficiency of counsel’s performance and prejudice resulting from that deficient performance). We therefore affirm the circuit court’s rulings.

By the Court.—Orders affirmed.

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

