

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 28, 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 Nos. 2007AP1624
2007AP1625
STATE OF WISCONSIN**

**Cir. Ct. Nos. 2003CF1882
2003CF2932**

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

LARNAL LINDEN,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
JOSEPH R. WALL, Judge. *Affirmed.*

Before Curley, P.J., Fine, J., and Daniel L. LaRocque, Reserve
Judge.

¶1 PER CURIAM. Larnal Linden appeals from orders denying his
postconviction and reconsideration motions. We conclude that the issues Linden

raises (apart from that raised on reconsideration) were decided adversely to him on direct appeal and cannot be relitigated. Insofar as the new issue Linden raised on reconsideration was not decided on direct appeal, the “new law” that Linden seeks to apply does not retroactively apply to cases on collateral review. Therefore, we affirm.

¶2 In Milwaukee County Circuit Court Case No. 2003CF1882 (Appeal No. 2007AP1624), Linden pled guilty to delivering cocaine as a subsequent drug offense and as a party to the crime. In Milwaukee County Circuit Court Case No. 2003CF2932 (Appeal No. 2007AP1625), Linden pled guilty to two counts of delivering cocaine as a subsequent drug offense, and to felony bail jumping. He pled guilty to all of these offenses as a global plea bargain after the trial had begun. After pleading guilty but before he was sentenced, Linden moved for presentence plea withdrawal alleging the ineffective assistance of trial counsel. After an evidentiary hearing, the trial court denied the motion. The trial court ultimately imposed a three-year consecutive sentence, comprised of one- and two-year respective periods of initial confinement and extended supervision for the conviction in Case No. 2003CF1882. For the drug convictions in Case No. 2003CF2932, the trial court imposed a six-year consecutive sentence, comprised of two three-year respective periods of initial confinement and extended supervision, and a three-year consecutive sentence comprised of one- and two-year respective periods of initial confinement and extended supervision. For the bail-jumping conviction in that same case, the trial court imposed a five-year consecutive sentence, comprised of two- and three-year respective periods of initial confinement and extended supervision. Linden appealed from the judgment in Case No. 2003CF2932; he did not appeal from the judgment in Case No.

2003CF1882. He now collaterally attacks both judgments pursuant to the denial of his postconviction and reconsideration motions.

¶3 On direct appeal from Case No. 2003CF2932, Linden challenged the trial court's denial of his motion for presentence plea withdrawal. That challenge necessarily included his guilty plea entered in Case No. 2003CF1882 because this was a global plea bargain on cases that had been tried, pled and sentenced in consolidated proceedings. This court affirmed the judgment of conviction, addressing the merits of the plea withdrawal issue and rejecting Linden's underlying ineffective assistance issues. *See State v. Linden*, No. 2005AP3115-CR, unpublished slip op. ¶¶6-9 (WI App Jan. 23, 2007).

¶4 Linden now files a postconviction motion seeking to “vacate [the] judgment ... or ... order a new trial” on the basis of ineffective assistance of postconviction counsel pursuant to *State ex rel. Rothering v. McCaughtry*, 205 Wis. 2d 675, 681, 556 N.W.2d 136 (Ct. App. 1996). The trial court summarily denied the motion, ruling that the ineffective assistance of trial counsel claim, which is what Linden is again challenging, has already been decided adversely to him, and insofar as Linden suggests that he had “no choice but to enter his pleas,” the records show otherwise. Linden then moved for reconsideration, urging the trial court to apply *Crawford v. Washington*, 541 U.S. 36 (2004). The trial court also denied reconsideration, ruling that *Crawford* does not apply retroactively to cases on collateral review, citing *Whorton v. Bockting*, 127 S. Ct. 1173 (2007). Linden appeals.

¶5 Linden claims that he is entitled to relief because trial counsel was ineffective for failing to challenge the State's use of hearsay evidence at trial, for failing to “pursue and present” testimony from the codefendants as proof of

Linden’s innocence, that the trial court erroneously exercised its discretion by failing to hold an “arraignment/pretrial conference hearing,” and that the real controversy has not been tried, namely that “Linden felt he had no other choice except to plea[d] out to the charges.” Insofar as the trial proceeded until Linden pled guilty, these issues were decided adversely to Linden on direct appeal.¹ *See Linden*, No. 2005AP3115-CR, unpublished slip op. ¶¶7-9. We will not revisit previously rejected issues. *See State v. Witkowski*, 163 Wis. 2d 985, 990, 473 N.W.2d 512 (Ct. App. 1991).

¶6 On reconsideration, Linden urges the application of *Crawford*. *Crawford* however, does not retroactively apply to cases on collateral review. *See Whorton*, 127 S. Ct. at 1177. Consequently, we do not apply *Crawford*. *See Whorton*, 127 S. Ct. at 1177.

By the Court.—Orders affirmed.

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

¹ The only issue not decided on direct appeal was the failure to hold an “arraignment/pretrial conference hearing,” which Linden waived when he pled guilty. *See State v. Riekkoff*, 112 Wis. 2d 119, 122-23, 332 N.W.2d 744 (1983) (by entering a guilty plea, the defendant waives the right to challenge nonjurisdictional defects and defenses).

