

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 7, 2009

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. 2008AP458-CR

Cir. Ct. No. 2005CF825

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TAMIKIA L. BEAMON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and order of the circuit court for Milwaukee County: MEL FLANAGAN and JEFFREY WAGNER, Judges.
Affirmed.

Before Dykman, Vergeront and Bridge, JJ.

¶1 PER CURIAM. Tamikia Beamon appeals from a judgment convicting her of two counts of first-degree reckless homicide by use of a

dangerous weapon, and from an order denying her postconviction motion to withdraw her plea. We affirm for the reasons discussed below.

BACKGROUND

¶2 The charges in this case were based upon allegations that Beamon shot her former best friend upon learning that the friend was pregnant by Beamon's long-time boyfriend. Beamon confessed to the shooting, which killed both her friend and the friend's unborn child, and entered guilty pleas. Beamon initially received consecutive terms of fifteen years of initial confinement and five years of extended supervision, but she was resentenced to concurrent terms of twenty-five years in prison and fifteen years of extended supervision after showing that the State had breached its plea agreement.

¶3 Beamon moved to withdraw her pleas following her resentencing. She alleged that she had entered pleas only because she did not believe she could afford to pay the attorney privately retained by her family for the cost of a trial, and was not aware that the State Public Defender would appoint an attorney on her behalf if she could not pay for counsel. She further alleged that the trial court had neglected to inform her that counsel would be provided to her at no expense if she were indigent. The trial court denied her motion following an evidentiary hearing, and Beamon appeals.

DISCUSSION

¶4 In order to withdraw a plea after sentencing, a defendant must demonstrate by clear and convincing evidence that plea withdrawal is necessary to correct a manifest injustice such as ineffective assistance of counsel, evidence that the plea was involuntary, or failure of the prosecutor to fulfill the plea agreement.

State v. Krieger, 163 Wis. 2d 241, 250-51 & n.6, 471 N.W.2d 599 (Ct. App. 1991). When the alleged basis for plea withdrawal is an inadequate plea colloquy, the defendant must first make a prima facie showing that the court failed to provide some required information and allege that he or she did not understand the omitted information. *State v. Lackershire*, 2007 WI 74, ¶52, 301 Wis. 2d 418, 734 N.W.2d 23. The burden then shifts to the State to show that the defendant actually understood the information which should have been provided, such that the plea was knowingly, voluntarily and intelligently entered. *Id.*; *State v. Hampton*, 2004 WI 107, ¶46, 274 Wis. 2d 379, 683 N.W.2d 14.

¶5 When we review a plea withdrawal decision, our general standard of review is to “accept the circuit court’s findings of historical and evidentiary facts unless they are clearly erroneous but [to] determine independently whether those facts demonstrate that the defendant’s plea was knowing, intelligent, and voluntary.” *State v. Brown*, 2006 WI 100, ¶19, 293 Wis. 2d 594, 716 N.W.2d 906. However, in considering whether to grant a motion for plea withdrawal, the trial court may also assess the credibility of the proffered explanation for the request. *See State v. Kivioja*, 225 Wis. 2d 271, 291, 592 N.W.2d 220 (1999). Credibility determinations by the trier of fact lie outside the scope of this court’s review. *See State v. Marty*, 137 Wis. 2d 352, 359, 404 N.W.2d 120 (Ct. App. 1987), *overruled on other grounds by State v. Sanchez*, 201 Wis. 2d 219, 548 N.W.2d 69 (1996).

¶6 Here, the trial court noted that Beamon had initially gone through the intake process to obtain a public defender before her family retained private counsel for her. The court accepted counsel’s testimony that she had advised Beamon to enter pleas to avoid first-degree intentional homicide charges, but that counsel was prepared for trial, had been given no indication that Beamon’s family

could not pay her fee, and had informed Beamon that she would try the case if Beamon wanted to proceed to trial. The court found that Beamon understood that she could have a court appointed lawyer and that her claims that she entered pleas only because she was worried she could not afford to have counsel represent her at trial were not credible. We will not disturb the trial court's credibility determination about Beamon's reason for entering her pleas and its additional factual findings are not clearly erroneous in light of counsel's testimony. Therefore, there is no basis on appeal to conclude that Beamon's pleas were unknowingly or involuntarily given.

¶7 Given our conclusion that the trial court properly denied Beamon's plea withdrawal motion on its merits, we need not address the State's argument that Beamon should also have been procedurally barred from seeking plea withdrawal after first seeking resentencing.

By the Court.—Judgment and order affirmed.

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

