

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 15, 2002

Cornelia G. Clark
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. 01-2153-CR

Cir. Ct. No. 01 CM 2466

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TORRENCE C. BORUM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

¶1 WEDEMEYER, P.J.¹ Torrence C. Borum, *pro se*, appeals from a judgment entered after he pled guilty to one count of battery, contrary to WIS. STAT. § 940.19(1) (1999-2000).² He claims the trial court erred when it denied his

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (1999-2000).

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

motion seeking to withdraw his guilty plea. Because the trial court did not erroneously exercise its discretion when it denied Borum's motion to withdraw his plea, this court affirms.

I. BACKGROUND

¶2 On March 19, 2001, Borum and his wife, Pauline, started arguing about tax papers. The argument escalated into a physical confrontation, and ended when Pauline telephoned the police, who arrested Borum for domestic violence. Borum was charged with one count of battery, and pled not guilty. He intended to represent himself at the trial with a self-defense theory.

¶3 On the day of trial, Borum decided to enter a guilty plea after having a chance encounter with an acquaintance, Attorney Lena Taylor. Taylor reviewed the facts and Borum's self-defense theory, and then advised him to plead guilty. Borum entered a guilty plea.

¶4 Before sentencing, Borum hired Attorney Michael Backes to file a motion to withdraw his guilty plea. The trial court denied Borum's motion, finding that Borum failed to present a fair and just reason to grant the motion. Borum was sentenced to a stayed sentence of nine months' incarceration, in favor of two years' probation with various treatment conditions. Borum now appeals.

II. DISCUSSION

A. *Plea Withdrawal.*

¶5 Borum claims the trial court should have granted his motion to withdraw his plea. This court disagrees. This court reviews this issue subject to the erroneous exercise of discretion standard. *State v. Garcia*, 192 Wis. 2d 845,

861, 532 N.W.2d 111 (1995). The decision will not be overturned if the trial court considered the pertinent facts, applied the relevant law, and reached a reasonable decision. *Id.* The trial court should freely allow a defendant to withdraw a plea prior to sentencing if the court finds a fair and just reason for withdrawal and if the prosecution has not been substantially prejudiced by reliance upon the defendant's plea. *Id.*

¶6 Here, at the plea withdrawal hearing, Borum's counsel advised the trial court why Borum wanted to withdraw his plea:

There was some concern if he would proceed [to trial] that he would -- in his mind he would be incarcerated whereas if he entered a plea he would not. But after thinking it over he felt that was a poor choice. He was under duress at the time he made that choice.

The trial court found that Borum failed to present a fair and just reason to grant his motion to withdraw his plea. The trial court reasoned that "some duress" was insufficient to withdraw the plea. The trial court recounted the history of the case, explaining that the court had repeatedly discussed with Borum his decision to proceed *pro se*, and how that decision would put Borum at a disadvantage. Thus, the trial court found that the duress was related to Borum's feeling that he would be at a disadvantage if he proceeded to trial *pro se*. The trial court found, however, that Borum freely made the choice to proceed *pro se*. Having now changed his mind and having now decided that he would like to go to trial *with counsel* cannot constitute a fair and just reason to withdraw an otherwise valid plea.

¶7 The trial court also indicated that it did not observe any duress on the day that Borum pled guilty. Borum answered the court's plea colloquy questions

with no indication that he was under duress. Borum did not seek an adjournment. The trial court reasoned that “cold feet after pleading” was the real reason the motion to withdraw was filed. The trial court found that this was not a fair and just reason to grant plea withdrawal.

¶8 This court has reviewed the record and cannot conclude that the trial court’s decision constituted an erroneous exercise of discretion. The trial court considered the pertinent facts, applied the correct law, and reached a reasonable determination. Borum failed to present any fair or just reason to allow withdrawal of his plea.

B. Other Issues.

¶9 In his brief, Borum also contends that: (1) the police conducted a “one-eye closed investigation” and failed to consider all of the evidence in making the arrest; (2) Borum did not have the intent to commit the crime; and (3) that the Judicial Oversight Initiative violates the Fourteenth Amendment to the United States Constitution. Borum waived the right to raise these claims when he pled guilty. It is a general principle of law that a plea of guilty, voluntarily and understandingly made, constitutes a waiver of nonjurisdictional defects and defenses, including claims of constitutional dimension. *State v. Riekkoff*, 112 Wis. 2d 119, 122-23, 332 N.W.2d 744 (1983).

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

