

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 21, 2011

A. John Voelker
Acting 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. 2010AP2064-CR

Cir. Ct. No. 2007CF754

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NATHANIEL J. MADDEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Nathaniel Madden pled guilty to one count of armed robbery and one count of burglary, both as party to a crime and as a habitual criminal. The circuit court imposed a sentence totaling twenty-eight years, comprised of eighteen years of initial confinement and ten years of

extended supervision. In a postconviction motion, Madden contended the State violated the terms of the plea agreement at sentencing. The circuit court denied Madden's postconviction motion and Madden appeals. We affirm.

¶2 The criminal complaint charged Madden with one count of armed robbery and five counts of false imprisonment, all as party to a crime and as a repeater. Police reports attached to the criminal complaint identified David Ramos, Elmer Allen, and Nathan Fisher as others involved in the crimes.

¶3 At the outset of the plea colloquy, the State told the circuit court that the parties had

agreed to handle Mr. Madden's case after the co-defendants, and that's based on Mr. Madden's degree of cooperativeness in this particular investigation. So the agreement is that we will review what happens to the co-defendants and then come before the Court with either a joint recommendation or the State limiting itself to any — not going beyond what anybody else got because he was more cooperative.

¶4 At sentencing, the State reminded the circuit court of its agreement “to recommend ... that Mr. Madden receive less of a sentence than the co-defendants in this case. And by ‘co-defendants,’ I’m talking about Elmer Allen and David Ramos.” The State told the circuit court Ramos had been sentenced to twenty-two years of initial confinement and ten years of extended supervision and Allen had been sentenced to eighteen years of initial confinement and twelve years of extended supervision. The State then said “one of the co-defendants in this case was a person named Nathan Fisher,” who was sentenced to eight years of initial confinement and nine years of extended supervision. The State also indicated its “hop[e] that the Court does take into consideration Mr. Madden's cooperation and give him a sentence that is somewhat less than these other individuals.”

¶5 In a postconviction motion seeking resentencing, Madden contended the State breached the plea agreement at sentencing. Madden testified he believed the plea agreement encompassed the sentences given to co-defendants Ramos, Allen, and Fisher. Madden argued the State’s statement, “[a]nd by ‘co-defendants,’ I’m talking about Elmer Allen and David Ramos” constituted a breach of the plea agreement. Madden renews that argument on appeal.

¶6 A criminal defendant has a constitutional right to the enforcement of a negotiated plea agreement. *State v. Smith*, 207 Wis. 2d 258, 271, 558 N.W.2d 379 (1997). The determination of the terms of the plea agreement presents a question of historical fact that this court reviews under the clearly erroneous standard of review. See *State v. Williams*, 2002 WI 1, ¶20, 249 Wis. 2d 492, 637 N.W.2d 733. However, “the interpretation of the written transcript of the prosecutor’s comments [at sentencing] ... is a question of law to be determined independently by this court.” *Id.*, ¶35.

¶7 In this case, the postconviction court found the plea agreement was ambiguous as to the identity of Madden’s co-defendants. Any ambiguity in the plea agreement, however, is immaterial. Although the State initially referred to only Allen and Ramos as co-defendants, the State later named Fisher as an additional co-defendant whose sentence should be considered by the court when imposing sentence on Madden.

¶8 The postconviction court found there was not a material and substantial breach of the plea agreement, stating:

In the end, Nathan Fisher was identified as a co[-]defendant, and the State took the position that the Court should consider Mr. Madden’s cooperation and give him a sentence somewhat less than the other individuals. And Nathan Fisher was one of those individuals that had

been referenced and whose sentence had been revealed to the Court.

We agree. The State recommended Madden receive a lesser sentence than his co-defendants because of his cooperation, and the State told the circuit court Fisher was one of the co-defendants whose sentence should be considered. The State fulfilled its obligation under the plea agreement. Because no breach occurred, Madden is not entitled to resentencing.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2009-10).

