

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 17, 2012

Diane M. Fremgen
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. 2011AP1434
2011AP1435
2011AP1436
2011AP1437
2011AP1438**

**Cir. Ct. Nos. 1992CF920183
1984CF8850
1984CF307B
1979CF6606
1997CM709126**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ELMER KEITH TAYLOR, JR.,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Milwaukee County:
JEAN A. DI MOTTO, Judge. *Affirmed.*

Before Fine, Kessler and Brennan, JJ.

¶1 PER CURIAM. Elmer Keith Taylor, Jr., *pro se*, appeals an order denying his motion for postconviction relief. He contends that his trial lawyer

ineffectively represented him and that he has been subjected to *ex post facto* punishment. We reject these arguments and affirm.

¶2 Taylor first argues that his trial lawyer ineffectively represented him by failing to advise him of a collateral consequence of entering his plea. To establish ineffective assistance of counsel, a defendant must show both that his lawyer’s performance was deficient and that he was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Taylor contends that he was not aware that his Wisconsin convictions would make him qualify as an “armed career offender” under federal law, subjecting him to an enhanced sentence for future federal crimes. Taylor relies on *Padilla v. Kentucky*, 559 U.S. ___, 130 S. Ct. 1473 (2010), in which the United States Supreme Court held that an attorney performed deficiently by failing to inform a client that he may face deportation as a consequence of entering a guilty plea. *Id.*, 130 S. Ct. at 1483. Taylor contends that *Padilla* stands for the proposition that an attorney who fails to inform a client of a collateral consequence of a plea performs deficiently in representing his or her client.

¶3 Taylor misreads *Padilla*. That case did not hold that an attorney must inform his or her client about all collateral consequences of a plea. To the contrary, the *Padilla* court expressly stated that “it had never applied a distinction between direct and collateral consequences to define the scope of constitutionally ‘reasonable professional assistance’ required under *Strickland*.” *Padilla*, 130 S. Ct. at 1481. *Padilla* expressly limited its holding to deportation, explaining that an attorney who failed to inform a client that he or she may be deported as a consequence of entering a plea performs deficiently because deportation is a

uniquely “severe consequence,” that the circuit court characterized as “the equivalent of banishment or exile,” and that may well “be more important to the client than any potential jail sentence.” *Id.*, 1481, 1483, 1486. *Padilla* does not provide support for Taylor’s argument that his attorney performed deficiently by failing to inform him about possible *future* sentence enhancements he may face in federal court as a result of his plea.

¶4 Taylor next argues that he has been subjected to *ex post facto* punishment because he received a federal sentence that was enhanced as a result of his Wisconsin convictions. Taylor contends that the Wisconsin courts should vacate his prior convictions to avoid “be[ing] accomplices” to the constitutional violations occurring in federal court. Taylor’s challenge to his federal sentence should be brought in federal court. Assuming for the sake of argument that it is properly before us, the *ex post facto* clause is designed to prevent the State from making “more burdensome the punishment for a crime, after its commission.” *State v. Thiel*, 188 Wis. 2d 695, 703, 524 N.W.2d 641 (1994) (citation omitted). Legislation creating “penalty enhancers for crimes committed *after the legislation becomes effective*” does not violate the *ex post facto* clause because the punishment for the crime is not made more burdensome after its commission; it is made more burdensome by prior criminal acts. See *State v. Schuman*, 186 Wis. 2d 213, 217, 520 N.W.2d 107 (Ct. App. 1994) (emphasis added). Taylor was not subjected to *ex post facto* punishment when his federal sentence was enhanced due to his Wisconsin convictions.

Nos. 2011AP1434
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2011AP1438

By the Court.—Order affirmed.

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

