

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 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 No. 2011AP2650-CR

Cir. Ct. No. 2009CF1539

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GREGORY L. JOHNSON, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and orders of the circuit court for Milwaukee County: DANIEL L. KONKOL, CHARLES F. KAHN, JR., and DENNIS FLYNN, Judges.¹ *Affirmed.*

Before Curley, P.J., Fine and Brennan, JJ.

¹ The Honorable Daniel L. Konkol entered the judgment of conviction and imposed sentence. The Honorable Charles F. Kahn, Jr., entered the order denying Johnson's postconviction motion. The Honorable Dennis Flynn entered the order denying the motion for reconsideration.

¶1 PER CURIAM. Gregory L. Johnson, Jr., appeals a judgment convicting him of fleeing an officer; possession of a firearm by a felon, as a repeater; possession of an electronic weapon, as a repeater; and resisting an officer. He also appeals an order denying his postconviction motion to withdraw his guilty plea and an order denying his motion for reconsideration. The issues are whether the circuit court properly denied Johnson's motion to withdraw his guilty plea because he received ineffective assistance of counsel and whether he was coerced by his attorney to enter the plea. We affirm.

¶2 Johnson was involved in a high speed chase with the police when he refused to pull over for a traffic stop. Johnson reached speeds of up to sixty miles per hour, ran two stop signs, and eventually ran a red light, colliding with another vehicle. He then fled on foot, but was apprehended. When the police searched Johnson's trunk, they found a loaded firearm, ammunition for the firearm, a taser, a rubber mask and an electronic scale.

¶3 Johnson was charged with seven crimes. He pled guilty to four of the charges, while three were dismissed and read in for sentencing. At the sentencing hearing, Johnson's former girlfriend, Monica Webb, testified that she placed the weapons in Johnson's trunk without his knowledge, and that she lied to police about her involvement when they initially interviewed her. The circuit court found Webb's testimony to be incredible and sentenced Johnson to an aggregate term of eight years of imprisonment, with five years of initial confinement and three years of extended supervision, consecutive to a sentence he was serving after being revoked from extended supervision. Johnson filed a *pro se* motion for postconviction relief, which the circuit court denied without a hearing. Johnson moved for reconsideration. The circuit court again denied the motion.

¶4 Johnson first argues that he received ineffective assistance of counsel. In order to establish a claim of ineffective assistance of counsel, a defendant must show that his lawyer's performance was deficient and the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Where, as here, a defendant enters a guilty plea, the defendant is prejudiced by his lawyer's alleged errors where "there is a reasonable probability that, but for the counsel's errors, [the defendant] would not have pleaded guilty and would have insisted on going to trial." *State v. Bentley*, 201 Wis. 2d 303, 312, 548 N.W.2d 50 (1996) (citation omitted).

¶5 Johnson contends his trial lawyer, Thomas Flanagan, failed to adequately investigate his case because Flanagan was not aware that Webb called the authorities shortly after Johnson was arrested to claim responsibility for placing the weapons and other items in Johnson's car without his knowledge. The State concedes that it failed to timely disclose Webb's statement to the police.²

¶6 Even though Flanagan was not aware of Webb's statement to the police, the record establishes that Johnson and his attorney both knew that Webb had changed her story before Johnson entered his plea. According to Flanagan's statements to the trial court at sentencing, Johnson knew that Webb had taken responsibility for placing the weapons in his car and he contemplated going to trial based on Webb's recantation. Flanagan further explained that Johnson ultimately chose to plead guilty despite Webb's changed story so that he could resolve the case and avail himself of vocational training available in prison. Johnson was

² Johnson argued in his postconviction motion that the State's failure to disclose Webb's statement to the police violated *Brady v. Maryland*, 373 U.S. 83 (1963). The circuit court denied Johnson's request for relief. Johnson has not renewed this argument on appeal.

present at trial and heard this statement by his attorney, and he did not contradict his attorney's representation on his behalf.

¶7 Flanagan's uncontradicted statements at sentencing illuminate Johnson's reasons for entering his plea. Johnson's motion does not adequately explain why knowing about Webb's conversation with police would have caused him to do anything differently—that is, proceed to trial rather than plead guilty. Johnson already knew that Webb was willing to testify that she placed the contraband in his car without his knowledge. The fact that Webb also told this to the police adds nothing new. Because Johnson has not shown that, but for his lawyer's alleged failure to investigate, he would have insisted on going to trial, the circuit court properly exercised its discretion in denying his motion to withdraw his plea without a hearing. *See id.*

¶8 Johnson next argues that he should have been allowed to withdraw his plea because Flanagan coerced him into pleading guilty by threatening to withdraw if he did not enter a plea and by treating him in a manner that exhausted and demoralized him. We agree with the circuit court that Johnson's claim of coercion is wholly undercut by his representations to the circuit court during the plea colloquy. Under extensive questioning by the circuit court, Johnson stated that no one made any threats or pressured him to plead guilty and stated that he was entering a plea because he was, in fact, guilty. He also told the circuit court that he was satisfied with his attorney's representation. Because Johnson's assertions of coercion are directly contradicted by the record, the circuit court properly exercised its discretion in rejecting Johnson's claim that he should be allowed to withdraw his plea. *See State v. Hampton*, 2004 WI 107, ¶52, 274 Wis. 2d 379, 683 N.W.2d 14 (the circuit court may in the exercise of its legal

discretion deny a postconviction motion without a hearing if the record conclusively demonstrates that the defendant is not entitled to relief).

By the Court.—Judgment and orders affirmed.

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

