

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

September 19, 1995

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

**Nos. 95-1194-CR and
95-1195-CR**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

WARREN J. PIK,

Defendant-Appellant.

APPEAL from judgments and orders of the circuit court for Milwaukee County: TIMOTHY G. DUGAN, Judge. *Affirmed.*

WEDEMEYER, P.J.¹ Warren J. Pik appeals from judgments entered after pleading guilty to one count of criminal damage to property and operating a vehicle while intoxicated (second offense), contrary to §§ 943.01(1), 346.63(1)(a), and 346.65(2), STATS. He also appeals from orders denying his postconviction motion seeking to withdraw his guilty plea. Pik claims that the trial court erroneously exercised its discretion in denying his motion to withdraw his plea because the trial court did not address Pik's medical

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

condition. Because the trial court did not erroneously exercise its discretion and this court sees no proof of manifest injustice, this court affirms.

I. BACKGROUND

Pik was charged with criminal damage to property on September 20, 1991, and operating a vehicle while intoxicated (second offense) on February 24, 1992. Pik pleaded guilty to both charges on June 14, 1993. The plea was accepted as knowing and voluntary. Sentencing was set for September 1993, to allow time for Pik to attend to his medical condition.

Pik failed to appear for the September sentencing date and a warrant was issued. Sentencing actually took place on March 25, 1994. Shortly after sentencing, Pik filed a motion to withdraw his guilty plea. The trial court denied the motion. Pik now appeals.

II. DISCUSSION

To withdraw a guilty plea after sentencing, the defendant must show by clear and convincing evidence that a manifest injustice would result if the withdrawal was not permitted. *State v. Booth*, 142 Wis.2d 232, 235-37, 418 N.W.2d 20, 21-22 (Ct. App. 1987). Whether a defendant has made such a showing is a discretionary determination and will not be upset unless the trial court erroneously exercised its discretion. *Id.*

Pik argues that the manifest injustice present here is the trial court's failure to inquire into the nature of Pik's medical condition and how the condition affected Pik's ability to enter a plea. Pik contends that if an inquiry had been done, the trial court would have discovered that Pik's medical condition prevented him from entering a *knowing and voluntary* plea. Pik's argument is based on the following question and answer extracted from the plea colloquy:

THE COURT: In terms of being able to form judgments, is it [the medical condition] interfering with anything like that so you don't have your faculties about you today?

THE DEFENDANT PIK: Yes.

At the hearing on the postconviction motion, the trial court denied the motion to withdraw the plea, reasoning:

This is not an isolated one day plea and sentencing. It does involve an extended period in which the defendant did enter a plea, subsequently failed to appear for the sentencing on that plea, and was ultimately sentenced by a different judge than the judge that took the plea. And, therefore, the Court will consider the entire record of both dates.

And we would start with the plea date itself. And that transcript reflects that Judge Schellinger did have an extended conversation, discussion with the defendant in which she asked him a variety of questions. She was able to observe his demeanor. She asked the defendant if he understood what the State would have to prove. He indicated that he did. She asked him if he understood that it related to property regarding a Hugo Garcia. The defendant said that he did. He expressed that he understood the maximum penalties. He explained that he was pleading guilty because he was guilty. He stated that the facts in the complaint were true, he understood the charges in both the criminal damage to property as well as the operating under the influence. She asked him his age, how far he went in school.

In response to the question about his medical condition he expressed that he only had a headache. The question in which he expressed, that the Court

asked, "In terms of being able to form judgments is it interfering with anything like that so you don't have your faculties about you today?" is somewhat of a confusing question. He did answer that yes, but he indicated that he understood clearly everything earlier. She explained all the rights that he was giving up. He expressed that he hadn't used any drugs or alcohol, that he merely had a headache. He understood all of the constitutional rights that the Court went through specifically with him, and the Court also elicited from his attorney whether or not the attorney was aware of anything that was affecting the defendant's ability to knowingly and voluntarily enter his plea.... [T]he attorney was not aware of anything.

The trial court also indicated that Pik had every opportunity to raise this issue prior to the sentencing date or even on the date of sentencing itself, but instead, Pik indicated his desire to be sentenced. The trial court concluded:

Under those circumstances, and on that factual setting, the Court finds that the defendant has not shown by clear and convincing evidence, or by any evidence, any standard that his plea was not voluntarily and knowingly entered. And the Court specifically finds that based upon the record that the defendant's plea was freely, voluntarily, intelligently entered and that the withdrawal of his plea is not necessary to prevent any manifest injustice.

This court's review of the trial court's decision demonstrates that the trial court applied the applicable law to the relevant facts and reached a reasonable conclusion. *State v. Mordica*, 168 Wis.2d 593, 602, 484 N.W.2d 352, 356 (Ct. App. 1992). Based on the lengthy colloquy, the length of time before sentencing, Pik's representations at the sentencing hearing, the lack of medical evidence to show that Pik's mental faculties were impaired, and Pik's ability to respond appropriately to questions posed by the trial court, this court concludes

that the trial court did not erroneously exercise its discretion in denying Pik's motion to withdraw his guilty plea.

By the Court. – Judgments and orders affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.