COURT OF APPEALS
DECISION
DATED AND RELEASED

October 23, 1996

No. 95-3083-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DENNIS E. JONES,

Defendant-Appellant.

APPEAL from a judgment and an order of the circuit court for Kenosha County: BRUCE E. SCHROEDER and MARY K. WAGNER-MALLOY, Judges. *Affirmed*.

Before Anderson, P.J., Brown and Snyder, JJ.

PER CURIAM. Dennis E. Jones appeals from a judgment of conviction of soliciting another to commit perjury, contrary to § 939.30, STATS. He also appeals from an order denying his postconviction motion renewing his presentence motion to withdraw his guilty plea and seeking dismissal for improper venue and lack of jurisdiction. We affirm the judgment and the order.

Upon entry of a guilty plea, Jones was convicted in Kenosha County Circuit Court of urging Jumard Brooks to commit perjury in a Kenosha County criminal action. The Kenosha County case charged Jones with armed robbery and firearm possession. Brooks, a Racine County resident, received by hand delivery a lengthy and unsigned letter suggesting that he commit perjury in the Kenosha County matter. When the letter was sent, Jones was jailed at the Racine County Jail on the Kenosha County charges because of overcrowding in the Kenosha jail. Jones argues that even though the perjury was to be committed in the Kenosha County Circuit Court, venue was proper in Racine County because all events leading to the charge occurred in Racine County.

The general rule is that a guilty or no contest plea waives the right to raise nonjurisdictional defects and defenses, including claims of constitutional dimension. ***State v. Olson***, 127 Wis.2d 412, 418, 380 N.W.2d 375, 378 (Ct. App. 1985). A guilty plea waives challenges to venue. ***Dolan v. State***, 48 Wis.2d 696, 703, 180 N.W.2d 623, 626 (1970). However, waiver is avoided if there are grounds to withdraw Jones's plea. Jones suggests two reasons for permitting the withdrawal of his plea: (1) trial counsel was deficient for not challenging venue, and (2) his misunderstanding as to the effect of the plea.

A claim of ineffective trial counsel requires a showing that counsel's performance was deficient and that counsel's errors were prejudicial. ***State v. Giebel***, 198 Wis.2d 207, 218, 541 N.W.2d 815, 819 (Ct. App. 1995). We recognize that the right to a jury of the county where the crime was committed is a component of the constitutional right to a fair trial. ***State v. Mendoza***, 80 Wis.2d 122, 142, 258 N.W.2d 260, 268 (1977). However, the denial of a constitutional right without resulting prejudice does not afford relief. The dispositive question here is whether Jones was prejudiced by venue in Kenosha County.[1] *See* ***Giebel***, 198 Wis.2d at 218, 541 N.W.2d at 819 (we need not address both components if the defendant does not make a sufficient showing on one).

Jones does not offer even one suggestion of prejudice from being subject to the prosecution in Kenosha County. Nor can we conceive of one.

[1] Although we agree with the State's analysis that venue was proper in either Racine or Kenosha County, we need not decide that issue. Jones was prejudiced by trial counsel's failure to challenge venue only if he was in fact prejudiced by venue in Kenosha County.

This was not a case of a notorious nature and there was no possibility that Jones would have faced a biased jury. Jones was already under the jurisdiction of Kenosha County in terms of his physical placement and availability for trial court proceedings. The ability to investigate or secure witnesses is not affected by venue where neighboring counties are involved. It would be pure speculation to suggest that Jones would have been offered a favorable plea agreement or received more lenient treatment in Racine County. We conclude that Jones was not prejudiced by trial counsel's failure to challenge venue and that his plea is not invalidated by ineffective assistance of counsel.[2]

We turn to whether the trial court erroneously exercised its discretion is denying Jones's presentence motion to withdraw his plea based on an alleged misunderstanding of the consequences of his plea. *See* ***State v. Shanks***, 152 Wis.2d 284, 288-89, 448 N.W.2d 264, 266 (Ct. App. 1989) (a motion to withdraw a plea, filed prior to sentencing, is addressed to the discretion of the trial court and we review for an erroneous exercise of its discretion). A defendant has the burden to show by a preponderance of the evidence that there is a "fair and just reason" for withdrawal of the plea. ***State v. Canedy***, 161 Wis.2d 565, 583-84, 469 N.W.2d 163, 171 (1991). Confusion and genuine misunderstanding as to the consequences of the plea are factors as to whether a fair and just reason exists to permit plea withdrawal. ***Shanks***, 152 Wis.2d at 290, 448 N.W.2d at 266-67.

Jones asserted that he believed he would be found guilty of the solicitation charge and that it would be treated as a "read in" offense at the sentencing for the armed robbery charge, but that he would not be sentenced on it. On the presentence motion, the trial court found Jones incredible in his claim that he did not understand the consequences. We are required to give due regard to the opportunity of the trial court to assess the credibility of the witnesses. Section 805.17(2), STATS. At the postconviction stage, a different trial court judge also determined that Jones understood the consequences of his plea.

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[2] The trial court did not conduct a ***Machner*** hearing on Jones's claim that trial counsel was ineffective for failing to preserve the objection to venue. Jones asks this court to remand for a ***Machner*** hearing on the ground that he has made a prima facie showing of ineffective assistance of counsel. To be entitled to a hearing a defendant must allege facts which allow the court to meaningfully assess a claim of prejudice when ineffective assistance of counsel is alleged. ***State v. Bentley***, 201 Wis.2d 303, 318, 548 N.W.2d 50, 57 (1996). We decline to remand because there has not been a prima facie showing of prejudice.

At the plea hearing, Jones acknowledged his understanding that he faced forty-one years total exposure on the solicitation and armed robbery convictions. He was told that he could receive up to eleven years on the solicitation conviction and that the sentence could be added consecutive to the sentence he would receive on the armed robbery charge. The separate exposure from each crime was stated on the record. The finding that Jones's asserted belief was "facially untrue" is not clearly erroneous. The trial court properly exercised its discretion in denying Jones's motion to withdraw his plea.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.