



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 20, 2019

To:

Hon. Lee S. Dreyfus Jr.
Circuit Court Judge
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Gina Colletti
Clerk of Circuit Court
Waukesha County Courthouse
515 W. Moreland Blvd.
Waukesha, WI 53188

Susan Lee Opper
District Attorney
515 W. Moreland Blvd., Rm. G-72
Waukesha, WI 53188-2486

Christine A. Remington
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Paul A. Adams, #121220
Dodge Correctional Inst.
P.O. Box 700
Waupun, WI 53963-0700

You are hereby notified that the Court has entered the following opinion and order:

2017AP2032

State of Wisconsin v. Paul A. Adams (L.C. #2010CF487)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Paul A. Adams appeals from the denial of his motion to withdraw his plea. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

Adams pled guilty to operating a motor vehicle while intoxicated, sixth offense (OWI-6th), on July 23, 2010, and received a five-year sentence. Seven years later,² Adams filed a motion seeking plea withdrawal on the ground that the repeal of the Positive Adjustment Time (PAT) statute (WIS. STAT. § 302.113(2)(b) (2009-10))³ rendered his plea infirm as the ability to earn PAT was a factor in his decision to plead guilty. After an evidentiary hearing, the court denied Adams' motion on the grounds that PAT credit is not an entitlement and that Adams presented no legal grounds for the withdrawal of his plea.⁴

After sentencing, a defendant may withdraw his or her plea only upon a showing by clear and convincing evidence that plea withdrawal is necessary “to correct a ‘manifest injustice.’” *State v. Cain*, 2012 WI 68, ¶25, 342 Wis. 2d 1, 816 N.W.2d 177 (citation omitted). “One way for a defendant to meet this burden is to show that he did not knowingly, intelligently, and voluntarily enter the plea.” *State v. Sull*, 2016 WI 46, ¶24, 369 Wis. 2d 225, 880 N.W.2d 659 (citation omitted). In order for plea withdrawal to be granted, a defendant must allege facts that, if true, would entitle the defendant to relief. *Id.*, ¶26. If a defendant fails to allege sufficient facts or presents only conclusory allegations, or, if the record conclusively demonstrates that the defendant is not entitled to relief, the circuit court may in the exercise of its legal discretion deny the motion. *Id.*, ¶27.

² Adams was revoked from extended supervision on June 12, 2014, and returned to prison for one year, ten months and fourteen days.

³ PAT credit was available between October 2009 and August 3, 2011, when the law was repealed. *State v. Carroll*, 2012 WI App 83, ¶¶3-4, 343 Wis. 2d 509, 819 N.W.2d 343.

⁴ Adams also filed a motion for reconsideration, which the circuit court denied without a hearing.

Adams' assertion that the repeal of PAT caused a manifest injustice is without substance. Foremost is that Adams' ability to earn PAT was collateral to his plea to OWI-6th, and Adams was never entitled as a matter of right to PAT as PAT was a discretionary decision based, in part, upon whether a defendant presented a substantial risk to reoffend. *See* WIS. STAT. § 302.113(2)(c)2. (2009-10); *see also* WIS. STAT. § 973.198(5).

Furthermore, Adams was not without recourse. After PAT was repealed, the legislature passed WIS. STAT. § 973.198. Under § 973.198, an inmate may petition for PAT, and a court “shall either deny the petition or hold a hearing” and “[i]f the court determines that the inmate has earned [PAT], the court *may* reduce the term of confinement in prison.” *See* § 973.198(1)-(5) (emphasis added). Adams has the ability to receive PAT.⁵

Adams reliance on *State ex rel. Singh v. Kemper*, 2016 WI 67, 371 Wis. 2d 127, 883 N.W.2d 86, is misplaced as his 2017 petition for PAT under WIS. STAT. § 973.198 was timely filed. The fact that the circuit court appropriately denied Adams' request does not make Adams' plea unknowing or involuntary.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

⁵ Adams is aware of WIS. STAT. § 973.198 as he applied for PAT on October 12, 2017. The circuit court denied Adams' petition on the grounds that Adams posed an unacceptable risk of reoffending.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals