

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 7, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 98-1818-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID C. MYERS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: DANIEL R. MOESER, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

¶1 PER CURIAM. David Myers appeals from a judgment convicting him on three counts of sexually assaulting a child under thirteen. He also appeals from an order denying him postconviction relief. We affirm.

¶2 The State charged Myers with twenty-five counts involving sexual contacts with children. He pled not guilty to twenty-two, no contest to three, and not guilty by reason of insanity to all twenty-five. He subsequently withdrew his NGI plea, and the State subsequently dismissed the remaining twenty-two counts. For the three counts of which he was convicted, the trial court sentenced Myers to thirty-five years in prison on the first count, and forty years probation on the third count to run concurrent with the first count. For the second count, the court imposed and stayed a twenty-year prison term, and ordered forty years of probation concurrent with the third count.

¶3 Myers filed a motion to vacate his plea. He stated the following grounds for the motion:

1. The defendant will show this Court that he was denied effective [assistance] of counsel in the appointment of Mark W. Frank.
2. The defendant will show this Court that respective pleas were given through ignorance.
3. The defendant will show this Court that he was denied due process.
4. The defendant will show this Court that the State of Wisconsin subverted double jeopardy protection.
5. The defendant will show this Court that he was denied fundamental fairness.
6. The defendant will show this Court that the sentencing court was influenced unfairly.
7. The defendant will show this Court that he was improperly denied withdrawal of nolo contendere pleas.

He offered no further facts or argument in support of these allegations. The trial court denied the motion, without a hearing, because the grounds stated above contained “insufficient particularity to provide adequate notice.”

¶4 The trial court properly denied Myers's motion without a hearing. A motion to withdraw a plea containing conclusory allegations, unsupported by factual assertions, does not provide grounds for relief. *See State v. Washington*, 176 Wis.2d 205, 214, 500 N.W.2d 331, 335 (Ct. App. 1993).

[I]f the defendant fails to allege sufficient facts in his motion to raise a question of fact, or presents only conclusory allegations, or if the record conclusively demonstrates that the defendant is not entitled to relief, the trial court may in the exercise of its legal discretion deny the motion without a hearing.

Nelson v. State, 54 Wis.2d 489, 497-98, 195 N.W.2d 629, 633 (1972).

By the Court.—Judgment and order affirmed.

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

