

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

August 19, 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. 98-2946**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES D. BRABANT,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Monroe County:  
STEVEN L. ABBOTT, Judge. *Affirmed.*

Before Vergeront, Roggensack and Deininger, JJ.

PER CURIAM. Charles Brabant appeals from the trial court's order denying his motion for postconviction relief brought pursuant to § 974.06, STATS. The issue is whether Brabant should be allowed to withdraw his guilty plea. We conclude that he is not entitled to do so and affirm.

Brabant was convicted of several crimes in 1992 after entering a guilty plea. He filed a postconviction motion arguing that he received ineffective assistance of trial counsel. The trial court denied the motion after a hearing. We, too, rejected the claim on appeal. Meanwhile, Brabant filed a motion for postconviction relief pursuant to § 974.06, STATS. The trial court denied the motion. Brabant did not appeal that order. Then, in 1998, Brabant filed a second motion for postconviction relief pursuant to § 974.06. After a hearing, the trial court denied the motion.

As a preliminary matter, we address the State's argument that Brabant's claim is barred by *State v. Escalona-Naranjo*, 185 Wis.2d 168, 185, 517 N.W.2d 157, 163 (1994). The State contends that Brabant's claim is barred because he has not alleged a sufficient reason for failing to raise his arguments in his prior postconviction motions or on direct appeal. The State did not, however, raise the *Escalona-Naranjo* issue in the trial court. Because the State did not raise the *Escalona-Naranjo* issue in the trial court, Brabant was not afforded an opportunity to explain why he did not make his arguments in prior proceedings. Therefore, we are unwilling to invoke *Escalona-Naranjo* against Brabant. See *State v. Avery*, 213 Wis.2d 228, 247-48, 570 N.W.2d 573, 581-82 (Ct. App. 1997).

As to the merits, Brabant argues that he is entitled to withdraw his guilty plea because he wrote a letter to the trial court several days before he entered his plea in which he stated that he wished to fire his attorney and felt that he was being coerced into entering his plea. Because the letter was misfiled and the trial court did not see it before Brabant entered his plea, Brabant contends that there was a serious flaw in the integrity of the plea process.

When a defendant seeks to withdraw a plea after sentencing, he or she must demonstrate by clear and convincing evidence that a manifest injustice has occurred. *See State v. Bentley*, 201 Wis.2d 303, 311, 548 N.W.2d 50, 54 (1996). A plea will be considered manifestly unjust if it was not entered knowingly, voluntarily and intelligently. *See State v. Giebel*, 198 Wis.2d 207, 212, 541 N.W.2d 815, 817 (Ct. App. 1995). A trial court's decision denying a motion to withdraw a plea is discretionary and will not be reversed unless the trial court erroneously exercises its discretion. *See State v. Spears*, 147 Wis.2d 429, 434, 433 N.W.2d 595, 598 (Ct. App. 1988).

We conclude that Brabant has not shown by clear and convincing evidence that a manifest injustice has occurred entitling him to withdraw his plea. During the plea hearing, Brabant told the trial court that he wished to enter a plea to the charges, that he understood the charges and their consequences, that he understood the constitutional rights he was waiving by entering the plea, and that he was not being coerced into entering the plea. Despite extensive questioning by the trial court, Brabant did not mention the letter of which he now complains. No manifest injustice has occurred because Brabant, the only person who knew of the letter's existence, did not even mention the letter to the trial court and exhaustively affirmed his desire to enter a plea at the time he did so.

*By the Court.*—Order affirmed.

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

