

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 17, 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. 99-0128

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

THOMAS A. FREESE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Grant County:
ROBERT P. VAN DE HEY, Judge. *Affirmed.*

Before Eich, Vergeront and Roggensack, JJ.

PER CURIAM. Thomas Freese appeals from an order denying his motion to reconsider a prior order which had denied his motion to vacate his judgment of conviction for felony bail jumping. He claims the bail jumping conviction should have been vacated following the subsequent dismissal of the underlying criminal charges that formed the basis for the bail jumping offense.

Specifically he argues that he could not violate his bail condition to “commit no further crimes” unless he was actually convicted of committing a crime. We disagree and affirm.

BACKGROUND

In 1995 Freese was charged in Wisconsin with two counts of first-degree sexual assault of a child. A condition of his release on bail was that he not commit any further crimes. While he was out on bond, he was charged in Iowa with domestic abuse, assault and harassment. As a result of the Iowa charges, the State of Wisconsin charged Freese with bail jumping for violating the terms of his bond. Freese pleaded no contest to the bail jumping charge. The Iowa charges were dismissed “in the furtherance of justice,” apparently after extradition efforts failed. Freese then moved to vacate his bail jumping charge. The circuit court denied the motion and a subsequent motion for reconsideration without a hearing.

STANDARD OF REVIEW

A defendant is entitled to a hearing on a postconviction motion when he alleges facts that, if true, would entitle him to relief. *State v. Bentley*, 201 Wis.2d 303, 309-10, 548 N.W.2d 50, 53 (1996). No hearing is required, though, when a defendant presents only conclusory allegations or the record conclusively demonstrates that he is not entitled to relief. *See Nelson v. State*, 54 Wis.2d 489, 497-98, 195 N.W.2d 629, 633 (1972). Although the ultimate decision whether to vacate a conviction lies within the trial court’s discretion, we will independently determine whether the facts alleged in a postconviction motion were sufficient to warrant a hearing. *See Bentley*, 201 Wis.2d at 310, 548 N.W.2d at 53.

ANALYSIS

Section 974.06(1), STATS., permits a person who is serving a sentence pursuant to a Wisconsin conviction to claim the right of release if the sentence was imposed in violation of the laws of this state. In order to obtain a valid conviction for bail jumping under § 946.49(1), STATS., the State must show that a defendant was arrested for or charged with a crime, that he was released on bond, and that he intentionally failed to comply with the conditions of that bond. *State v. Hansford*, 219 Wis.2d 226, 244, 580 N.W.2d 171, 179 (1998). Freese claims that his bail jumping conviction, and therefore his sentence, is illegal because the State failed to establish that he violated a condition of his release. However, Freese's theory rests on several false assumptions.

First, he argues that a conviction is the only means by which the State can show that he committed a crime. However, we agree with the State that a conviction is only one way in which the State may meet its burden. Other ways include presenting evidence to show that the defendant committed each element of a crime or obtaining the defendant's admission that he committed a crime. In the case of a no contest plea, the State need only provide a factual basis sufficient to draw an inference of guilt. *State v. Spears*, 147 Wis.2d 429, 435, 433 N.W.2d 595, 598 (Ct. App. 1988).

Second, Freese maintains that only violations of Wisconsin law should count as crimes. However, we explicitly rejected that same argument in *State v. West*, 181 Wis.2d 792, 796-97, 512 N.W.2d 207, 208-09 (Ct. App. 1993), concluding that the violation of a law in another jurisdiction could constitute a crime.

Here the bail jumping complaint alleged that Freese was charged with several violations of Iowa laws after he threatened to kill his girlfriend if she moved out of their apartment. The fact that Iowa did not follow through on prosecuting the domestic abuse and assault charges against Freese does not mean that he did not commit the offenses. The State established that Freese had committed a crime when Freese pleaded no contest to the bail jumping charge and the trial court accepted that there was a factual basis for the plea.¹ Therefore, the circuit court was not required to grant Freese a hearing on his postconviction motion.

By the Court.—Order affirmed.

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

¹ The transcript of the plea hearing was not included in the record on appeal; however, we will presume that absent documents support the circuit court's decision. *Austin v. Ford Motor Co.*, 86 Wis.2d 628, 641, 273 N.W.2d 233, 239 (1979).

