

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 13, 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. 99-0752-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADRIAN L. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: ROBERT C. CRAWFORD, Judge. *Affirmed.*

CURLEY, J.¹ Adrian Williams appeals the judgment, following his pleas of guilty, convicting him of one count of possession of cocaine, contrary to § 961.41(3g)(c), STATS., and one count of possession of a dangerous weapon by a child, contrary to § 948.60(2)(a), STATS.² He also appeals the order denying his

¹ This appeal is decided by one judge pursuant to § 752.31(2), STATS.

² Williams was seventeen years old when the offense was committed.

postconviction motion. Williams argues that the trial court should have permitted him to withdraw his guilty pleas because the trial court's failure to advise him that it would not be following the sentencing recommendation negotiated by his attorney and the State resulted in a "manifest injustice" requiring a withdrawal of the guilty pleas.³ We affirm. Williams's contention—that he is entitled to withdraw his guilty pleas because the trial court exceeded the bargained-for sentencing recommendation without advising him of its intention, rendering the procedure unfair and constituting a "manifest injustice"—is contrary to the holding in *Melby v. State*, 70 Wis.2d 368, 234 N.W.2d 634 (1975).

I. BACKGROUND.

Williams was charged with committing two crimes after the police discovered cocaine and a gun in Williams's bedroom. After unsuccessfully challenging the search and seizure of the drugs and the weapon, Williams entered into a plea negotiation with the State. Under the terms of the plea negotiation, Williams agreed to plead guilty to the two charges and the State agreed to recommend a four-month sentence in the House of Correction for the drug charge and a three-month consecutive sentence on the weapon charge. At the guilty plea proceeding, Williams filled out and signed a guilty plea questionnaire and a waiver of rights form. The form included a sentence which read, "[I] understand that the Judge is not bound to follow any plea agreement or any recommendation made by the District Attorney, my attorney, or any presentence report. I understand that the Judge is free to sentence me to the following minimum (if

³ Although not cited, Williams is referring to language found in *State v. Harrell*, 182 Wis.2d 408, 414, 513 N.W.2d 676, 678 (Ct. App. 1994) ("A postconviction motion for the withdrawal of a [guilty] plea should only be granted when necessary to correct a manifest injustice.").

applicable) and maximum possible penalties in this case.” Williams was further advised by the trial court that the court did not “have to follow the prosecutor’s recommendation about what your punishment should be[.]” The trial court refused to follow the recommendation and instead, sentenced Williams to one year in the House of Correction on count one, and a consecutive nine-month sentence on count two. The trial court also denied Williams the right to serve his sentences under the Huber law. Williams then brought a postconviction motion seeking to withdraw his pleas of guilty, contending that the current practice of Wisconsin trial judges not being required to warn a defendant when the trial judge is intending to exceed the “bargained-for recommendation” is unfair and that this failure by the trial court to follow the sentencing recommendation constitutes a “manifest injustice” requiring the trial court to permit Williams to withdraw his pleas of guilty. The trial court denied his motion in a written decision and this appeal follows.

II. ANALYSIS.

Williams concedes that the trial court followed current law in taking Williams’s guilty pleas, and that, under current law, the trial court was not obligated to advise or warn Williams that the trial court’s sentence was going to exceed that recommended by the State. *See generally Melby v. State*, 70 Wis.2d 368, 384-87, 234 N.W.2d 634, 642-44 (1975); *State v. Betts*, 129 Wis.2d 1, 383 N.W.2d 876 (1986). Williams, however, seeks a change in the law. Williams does not propose that the rule be changed to require the trial court to be bound by the plea negotiation as was first proposed by the Wisconsin Judicial Council in

1986.⁴ Rather, Williams proposes that the trial court should be obligated to “inform the defendant if the trial court intends to impose a greater sentence than recommended and then allow the defendant to withdraw his plea, without any need to give detailed reasons.”

This court must reject Williams’s proposal. It is contrary to the clear directive of the supreme court, and thus, is not the law of this state. This court is obliged to follow supreme court precedent. *See State v. Carviou*, 154 Wis.2d 641, 644-45, 454 N.W.2d 562, 564 (Ct. App. 1990). Clear precedent holds contrary to Williams’s proposal.

In *Melby*, 70 Wis.2d at 384, 234 N.W.2d at 642, our supreme court rejected the identical argument made by Williams. There, *Melby* argued that the trial court should have either accepted the plea agreement or rejected it and given him an opportunity to withdraw his guilty plea. *See id.* at 384-85, 234 N.W.2d at 642. In rejecting this argument, the supreme court stated:

The record conclusively shows that the defendant was informed of and fully understood the full range of penalties that could be imposed as to the crimes charged. It is equally clear that the defendant knew and understood that the trial court was not bound by his plea agreement with the state before he entered his pleas of guilty.

....

Id. at 385, 234 N.W.2d at 642.

⁴ The Judicial Council rule would have required the trial court to advise a criminal defendant of the fact that the trial court was planning on exceeding the sentencing recommendation where there was a specific sentencing recommendation. Under the proposed rule, the trial court would have been obligated to tell a criminal defendant what sentence the trial court was contemplating and also reveal the reasons the trial court would not follow the recommendation of the parties.

Citing *Young v. State*, 49 Wis.2d 361, 367, 182 N.W.2d 262, 265 (1971), the supreme court related that:

It has been held also that failure to receive sentence concessions contemplated by a plea agreement is no longer available as a basis for withdrawing a guilty plea on the grounds of manifest injustice.

The supreme court went on to state that it found *Melby*'s proposal unacceptable because by requiring the trial court to either accept the sentencing recommendation or permit the defendant to withdraw his plea, the trial court would become a party to the plea negotiation. *See id.* at 385-86, 234 N.W.2d at 642-43. The supreme court noted that trial judges in Wisconsin have been prohibited from participating in plea negotiations since the ruling in *State v. Wolfe*, 46 Wis.2d 478, 175 N.W.2d 216 (1970). *See id.* The supreme court then concluded that trial courts were not obligated to advise the defendant that the trial court intended to deviate from a sentencing recommendation, nor were trial courts required to allow defendants under the "manifest injustice" test to withdraw their pleas after sentencing. The holding in *Melby* remains unchanged and has been cited innumerable times as the current law in Wisconsin (citations omitted). Although this court recognizes the significant risk taken by a criminal defendant who gives up valuable constitutional rights by pleading guilty in exchange for a sentencing recommendation that may go completely unheeded, this court lacks the authority to overrule, modify, or withdraw published opinions. *See In re Cook v. Cook*, 208 Wis.2d 166, 189-90, 560 N.W.2d 246, 256 (1997).

Moreover, here the trial court articulated its reasons for shunning the State's sentencing recommendation. The trial court engaged in an extensive colloquy with Williams. Afterwards the trial court stated it believed that Williams

had been involved in drug dealing and this fact necessitated a lengthy stay in jail. The trial court also stated that Huber release was inappropriate because Williams would either continue to be involved in drugs or flee if allowed Huber privileges. Thus, the trial court here familiarized itself with the relevant facts and properly exercised its discretion when it disregarded the sentencing recommendation.

For the reasons stated, this court finds that the trial court properly denied Williams's request to withdraw his guilty pleas because he failed to allege a manifest injustice.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* RULE 809.23(1)(b)4, STATS.

