COURT OF APPEALS
DECISION
DATED AND FILED

March 28, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2603-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANTHONY J. DENTICI,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

¶1 FINE, J. Anthony Dentici, Jr., appeals from a judgment, entered on a no-contest plea, convicting him of misdemeanor retail theft, *see* WIS. STAT. § 943.50(1m), and from the trial court's order denying his motion for postconviction relief.

¶2 Dentici claims that his plea was not knowing and voluntary because he was not told at the time that he entered his plea that a statute then in effect, WIS. STAT. § 756.06(2)(am) (1997–98), which provided for six-person juries in misdemeanor cases, might be held unconstitutional, as it later was in ***State v. Hansford***, 219 Wis. 2d 226, 580 N.W.2d 171 (1998) (striking down the predecessor provision, WIS. STAT. § 756.096(3)(am)), and that by pleading no-contest Dentici was giving up not only his then statutory right to a six-person jury trial but also, potentially, to a right to be tried by a jury of twelve. He faults both the trial court and his lawyer in this regard and claims that the lawyer accordingly gave him ineffective assistance of counsel. The trial court denied his postconviction motion without a hearing. We affirm.

¶3 A defendant may not withdraw a plea after imposition of sentence, as here, unless he or she establishes by "clear and convincing evidence" that there has been a "manifest injustice." ***State v. Woods***, 173 Wis. 2d 129, 136, 496 N.W.2d 144, 147 (Ct. App. 1992). Whether this standard has been met is within the trial court's informed and reasoned discretion. *See* ***id.***, 173 Wis. 2d at 136–137, 496 N.W.2d at 147. A trial court misuses its discretion, however, if it bases its decision on "an error of law." ***Id.***, 173 Wis. 2d at 137, 496 N.W.2d at 147.

¶4 The following is the colloquy that the trial court had with Dentici before accepting his plea:

> THE COURT: Okay. And do you understand by signing this form, giving it to the Court today and entering your plea, you'll be giving up all the rights described in the form, including your right to a jury trial, whereby all the members of the jury would have to agree that you were guilty beyond a reasonable doubt before the Court could enter a judgment?
>
> THE DEFENDANT: Yes, I do.

The "form" that the trial court mentioned is the "Guilty Plea Questionnaire and Waiver of Rights Form" (uppercasing omitted) used by the circuit courts in Milwaukee County. The part of the form to which the trial court referred recited that the person signing the form understood that among the constitutional rights being surrendered by the plea was the "right to both a jury and court trial in this case." The pre-printed form further explained: "In a court trial the judge would decide my guilt or innocence; in a jury trial my case would be decided by 12 people. I understand that all 12 people would have to agree in order to reach a verdict." In each instance where the pre-printed "12" appears, the "12" was crossed-out and a handwritten "6" was inserted. Dentici signed the form, and, as noted, affirmed in his oral colloquy with the trial court that he understood that by entering his plea he was relinquishing his right to a trial by jury. At the time he entered his plea, the law in this state provided for a jury trial in misdemeanor cases before six jurors. The form Dentici signed was accurate, and he has not demonstrated—beyond his mere assertion—why or how his decision to enter his plea would have been different had he known that the statute was being challenged on appeal in another case. The trial court did not erroneously exercise its discretion in concluding that Dentici has not established that a "manifest injustice" requires that he be permitted to withdraw his plea.

¶5 As noted, Dentici also claims that his lawyer's failure to tell him that the six-person jury statute was being challenged on appeal in another case deprived him of his constitutional right to effective assistance of counsel.

¶6 Every criminal defendant has a Sixth Amendment right to the effective assistance of counsel, *see* ***Strickland v. Washington***, 466 U.S. 668, 686 (1984), and a coterminous right under Article I, § 7 of the Wisconsin Constitution, *see* ***State v. Sanchez***, 201 Wis. 2d 219, 226–236, 548 N.W.2d 69, 72–76 (1996).

In order to establish a violation of this right, a defendant must prove two things: (1) that his or her lawyer's performance was deficient, and, if so, (2) that "the deficient performance prejudiced the defense." ***Strickland***, 466 U.S. at 687; *see also* ***Sanchez***, 201 Wis. 2d at 236, 548 N.W.2d at 76. In assessing a defendant's claim that his or her counsel was ineffective, a court need not address both the deficient-performance and prejudice components if the defendant does not make a sufficient showing on one. *See* ***Strickland***, 466 U.S. at 697; ***Sanchez***, 201 Wis. 2d at 236, 548 N.W.2d at 76. A defendant establishes the requisite "manifest injustice" in order to withdraw a plea if he or she proves that the trial lawyer rendered ineffective assistance in connection with the plea. *See* ***State v. Jackson***, 229 Wis. 2d 328, 341, 600 N.W.2d 39, 45 (Ct. App. 1999).

¶7 A defendant is not entitled to an evidentiary hearing on an ineffective-assistance-of-counsel claim unless he or she "'alleges facts which, if true, would entitle the defendant to relief.'" ***State v. Bentley***, 201 Wis. 2d 303, 309, 548 N.W.2d 50, 53 (1996). Whether a defendant does so is a question of law that we review *de novo*. *See* ***id.***, 201 Wis. 2d at 310, 548 N.W.2d at 53.

¶8 ***Bentley*** reiterated what a defendant who claims that he or she would not have entered a plea but for a lawyer's deficient performance must show in order to make a *prima facie* case of prejudice:

> This court has long held that the facts supporting plea withdrawal must be alleged in the petition and the defendant cannot rely on conclusory allegations, hoping to supplement them at a hearing. A defendant must do more than merely allege that he would have pled differently; such an allegation must be supported by objective factual assertions.

Id., 201 Wis. 2d at 313, 548 N.W.2d at 54 (internal citations and footnote omitted). Mere self-serving conclusions will not suffice. *See* ***id***., 201 Wis. 2d at

316, 548 N.W.2d at 56. Rather, the defendant "must also allege facts which allow the court to meaningfully assess his claim of prejudice." ***Id***., 201 Wis. 2d at 318, 548 N.W.2d at 57. Dentici has utterly failed to meet this burden because, as noted, he has not even attempted to explain why he was willing to enter his plea when the law provided for a jury trial by six jurors in his type of case but would not have entered the plea if he knew that the six-person-jury statute was being challenged in another case.

By the Court.—Judgment and order affirmed.

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