

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 17, 2008**

David R. Schanker  
Clerk of Court of Appeals

**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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2006AP1892-CR**

**Cir. Ct. No. 2005CF103**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**YATAU HER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Yatau Her appeals from a judgment of conviction and order denying his postconviction motion. We affirm.

¶2 Her pleaded guilty to one count of attempted first-degree intentional homicide. Before trial he twice moved to withdraw the plea, but these motions were withdrawn or denied. After sentencing, Her filed a postconviction motion claiming ineffective assistance of trial counsel. This motion was also denied.

¶3 On appeal Her argues that the circuit court erred by denying his motions to withdraw his plea before sentencing. The legal standard for plea withdrawal before sentencing is that a defendant should be allowed to withdraw a guilty plea for any fair and just reason, unless the prosecution would be substantially prejudiced. *State v. Canedy*, 161 Wis. 2d 565, 582, 469 N.W.2d 163 (1991).

¶4 Her argues that he should have been allowed to withdraw his plea because his trial counsel did not provide him with all necessary and relevant discovery. He raised this issue in his first pro se plea withdrawal motion. However, at the hearing held on that motion, Her's attorney explained how Her had misunderstood what discovery was available, and Her agreed that he had, in fact, been given all the discovery he wanted, with the exception of viewing a surveillance video. After that hearing, Her was able to view the video, and at the next hearing he withdrew his plea withdrawal motion as to this ground. Her did not raise this issue again in his second plea withdrawal motion. Therefore, we conclude that this motion was withdrawn by Her, and there is no reason for us to review the issue further.

¶5 Her also argues that he should have been allowed to withdraw his plea because his trial attorney did not have a bullet tested and did not interview certain State witnesses, apparently referring to his co-actors in the crime. However, Her does not explain what would have changed if counsel had done

these things. He does not explain why this was a fair and just reason for him to withdraw his plea. Therefore, we conclude that the motion was properly denied.

¶6 Her also filed a postconviction motion alleging ineffective assistance of counsel. The motion was denied without an evidentiary hearing. To establish ineffective assistance of counsel a defendant must show that counsel's performance was deficient and that such performance prejudiced his defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate prejudice, the defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* at 694. A reasonable probability is one sufficient to undermine confidence in the outcome. *Id.* We need not address both components of the analysis if the defendant makes an inadequate showing on one. *Id.* at 697.

¶7 On appeal Her's arguments on this motion essentially repeat the ones made above. He argues that counsel did not allow him to review all evidence, failed to interview unspecified witnesses, and failed to develop a theory of defense. However, none of these arguments include any specific claims about how correcting these alleged failures by counsel would have caused Her not to plead guilty. He does not describe any evidence he was unaware of, or explain what the witnesses would have said, or describe a theory of defense that should have been pursued. Without these specifics, Her has failed to sufficiently allege prejudice, and the motion was properly denied without a hearing. *See State v. Allen*, 2004 WI 106, ¶¶12-24, 274 Wis. 2d 568, 682 N.W.2d 433.

¶8 Finally, Her argues that the court erroneously exercised its sentencing discretion. This argument has been waived because Her did not raise the issue first in his postconviction motion. *State v. Norwood*, 161 Wis. 2d 676,

680-81, 468 N.W.2d 741 (Ct. App. 1991). Even if we consider the merits of the argument, Her does not prevail. He was given a sentence of twenty-four years of initial confinement and fifteen years of extended supervision for a crime in which he shot a store clerk during an armed robbery. Her argues that his record does not justify such a long sentence, and that it is harsh and unconscionable. We disagree. The sentence is well short of the maximum of sixty years, and the crime was very serious. Her may be arguing that the circuit court misinterpreted his prior record, but we disagree. That record clearly shows that the current crime is more dangerous than earlier ones, which means that the circuit court's description of him as becoming more dangerous over time was accurate.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

