COURT OF APPEALS
DECISION
DATED AND RELEASED

MAY 13, 1997

NOTICE

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.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2807-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DAVID W. PENDER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

PER CURIAM. David Pender, a six-time recidivist, appeals his latest conviction for bail jumping, having pleaded no contest to the charge and having received a ninety-day sentence to the county jail. The trial court dismissed two other charges for bail jumping and obstruction of an officer. At the start of the sentencing hearing, Pender attempted to withdraw his plea. He claimed that he

had a valid defense to the charges and now wanted to proceed to trial. He also claimed prosecutorial breach of the plea agreement. In order to withdraw his plea before sentencing, Pender needed to give the trial court a fair and just reason. *See* ***State v. Canedy,*** 161 Wis.2d 565, 582, 469 N.W.2d 163, 170 (1991). On appeal, Pender has not pursued the plea breach argument, only briefly alluding to it. Instead, he concentrates on the claim that he has a valid defense to the charges and that this constituted a fair and just reason. While assertions of innocence are usually important factors, ***State v. Booth***, 142 Wis.2d 232, 238, 418 N.W.2d 20, 22 (Ct. App. 1987), we must affirm the trial court's decision unless the court erroneously exercised its discretion. ***Canedy,*** 161 Wis.2d at 579, 469 N.W.2d at 169. We see no erroneous exercise of discretion and therefore affirm Pender's conviction.

Pender did not show a fair and just reason for withdrawing his plea. First, his plea admitted guilt, ***State v. Rachwal***, 159 Wis.2d 494, 506, 465 N.W.2d 490, 494-95 (1991); ***Lee v. State Dental Bd***., 29 Wis.2d 330, 334, 139 N.W.2d 61, 63 (1966), and eliminated the presumption of innocence. *See* ***State v. Koerner***, 32 Wis.2d 60, 67, 145 N.W.2d 157, 160-61 (1966). This directly refuted his assertions of innocence. Second, Pender gave the trial court no special circumstances; he had no new evidence and sought to withdraw his plea on the basis of the same knowledge he had had at the plea hearing. Having entered a knowing and voluntary plea, Pender had merely had a change of heart. Plea makers may not withdraw pleas on such grounds. ***State v. Garcia***, 192 Wis.2d 845, 861-61, 532 N.W.2d 111, 117 (1995). They may vacillate before their pleas, not after, especially someone with Pender's criminal justice experience. *See* ***Nesbitt v. United States***, 773 F. Supp. 795, 802 (E.D. Va. 1991). In sum, we have no basis to overturn the trial court's discretionary ruling.

By the Court.—Judgment affirmed.

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